

AGENDA

REGULAR MEETING OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER (SDCP)

April 23, 2020

5:00 p.m.

DUE TO THE STAY AT HOME ORDER IN CALIFORNIA AND IN ACCORDANCE WITH THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, MEMBERS OF THE SDCP BOARD OF DIRECTORS WILL BE PARTICIPATING REMOTELY FOR THIS MEETING AND THERE WILL BE NO LOCATION FOR IN-PERSON ATTENDANCE. 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 San Diego Community Power Board of Directors on any agenda item or on a matter not appearing on the agenda, but within the jurisdiction of the Board. Public comments must be submitted using this ([web form](#)). Please indicate whether your comment is on a specific agenda item or a non-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 are limited to four hundred (400) words on the form. If you have anything that you wish to be distributed to the Board, please provide it to the Board Clerk via info@sdcommunitypower.org, who will distribute the information to the Members. It is requested that comments and other information be provided at least two (2) hours before the start of the Board meeting. All comments received by such time will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) comments received on each agenda item, or on non-agenda matters, may be read into the record at the meeting. Comments received after the two (2) hour limit will be collected, sent to the Board members in writing, and be part of the public record.

The public may participate using the following remote options:

Teleconference Meeting Webinar

<https://zoom.us/j/99924845932>

Telephone (Audio Only)

(669) 900 6833 or (346) 248 7799 | Webinar ID: 999 2484 5932

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

PRESENTATION

Presentation from the City of San Diego on its Franchise Agreement negotiations with San Diego Gas & Electric

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 use the web form noted above to provide a comment.

CONSENT CALENDAR

(Item 1)

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 use the web form noted above to comment on any item on the Consent Agenda.

1. Approval of the minutes for the Board of Directors of San Diego Community Power Regular Meeting held Thursday, February 27, 2020

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.

2. Operations and Administration Report from the Interim Executive Officer

Receive update on various operational and administrative activities and file this report.
Report includes:

- COVID-19 Impact
- Vendor RFPs
- Discussions with SDG&E and Other Compliance Matters
- Regulatory Update

3. Ad Hoc Subcommittee Update on Chief Executive Officer Recruitment

Receive report and provide direction as needed.

4. Report from Finance and Risk Management Committee

Receive report and committee recommendations regarding banking agreement and customer phasing schedule.

5. Review of San Diego Community Power Bylaws

Discuss and provide direction on draft SDCP Bylaws. Direct staff to provide SDCP Member Agencies with a copy of the proposed Bylaws and place the Bylaws on a future SDCP agenda for final approval.

6. Review and Approve Procurement Policy

Adopt Resolution No. 2020-02 adopting a Procurement Policy for SDCP.

7. Review and Approve Policy on Delegation of Authority to Chief Executive Officer For Regulatory and Legislative Matters

Adopt Resolution No. 2020-03 adopting a policy on delegation of authority to the Chief/Interim Executive Officer on regulatory and legislative matters impacting SDCP functions.

8. Approve Conflict of Interest Code for San Diego Community Power

Adopt Resolution No. 2020-04 adopting a the Conflict of Interest Code for San Diego Community Power and authorize staff to execute the appropriate documents and submit the adopted Code to the Board of Supervisors of San Diego County as SDCP's code-reviewing body and request approval of the Code pursuant to Government Code Section 87303.

9. Approval of Agreements with River City Bank and Emerald Blue for Credit and Banking Services

- a. Authorize the Interim Executive Director to execute an agreement and other necessary documents with River City Bank for credit and banking services in a form approved by the Interim Executive Officer and reviewed and approved as to form by the General Counsel.
- b. Authorize the Interim Executive Director to execute a collateral agreement and other necessary documents with Emerald Blue, LLC in a form approved by the Interim Executive Officer and reviewed and approved as to form by the General Counsel.

10. Approval of Agreement with Calpine Energy Solutions for Data Management and Customer Call Center Services

Authorize the Interim Executive Officer to execute a Data Management and Customer Service Center agreement with Calpine Energy Solutions, LLC for a three-year term (with optional one-year extension) beginning in March 2021 in a form approved by the Interim Executive Officer and reviewed and approved as to form by the General Counsel.

11. Approval of CCA Registration and Bond Agreement

- a. Authorize the Interim Executive Officer to execute the Community Choice Aggregator (CCA) Service Agreement between SDCP and SDG&E.
- b. Authorize River City Bank to post the \$100,000 bond with CPUC.
- c. Authorize staff to submit SDCP's CCA Registration Packet to CPUC for approval.

12. Approval of Community Advisory Committee nominees

Approve nominees from member cities to serve as members of the SDCP Community Advisory Committee.

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.

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.

CLOSED SESSION

13. Public Employment

Title: Chief Executive Officer

14. Conference with Labor Negotiators

Agency designated representative: Shawn Marshall, LEAN
Unrepresented employee: Chief Executive Officer

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 (858) 492-6005 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 www.sdcommunitypower.org/board-meetings. 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. Until SDCP obtains offices, those public records are 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, that is now suspended and can instead be made available electronically at info@sdcommunity.org. The documents may also be posted at the above website. Late-arriving documents received during the meeting are available for review by making an electronic request to the Board Secretary via info@sdcommunitypower.org.

**SAN DIEGO COMMUNITY POWER (SDCP)
BOARD OF DIRECTORS**
San Diego City Administration Building, 12th Floor
202 "C" Street
San Diego, CA 92101

MINUTES

February 27, 2020

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

The Agenda Items were considered in the order presented.

CALL TO ORDER

Chair Mosca called the SDCP Board of Directors meeting to order at 5:05 p.m.

PLEDGE OF ALLEGIANCE

Board Member West (Imperial Beach) led the Pledge of Allegiance.

ROLL CALL

PRESENT: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

ABSENT: None

Also Present: Interim Executive Officer Hooven, Assistant General Counsel Norvell, Interim Board Clerk Wiegelman

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

There were no additions or deletions to the agenda.

PUBLIC COMMENTS

Tara Hammond, City of San Diego resident, spoke regarding San Diego Gas and Electric's (SDG&E) proposal to increase the minimum bill and the City of San Diego's Franchise Agreement.

CONSENT AGENDA
(Item 1)

1. APPROVAL OF THE MINUTES FOR THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER SPECIAL MEETING HELD THURSDAY, JANUARY 30, 2020

ACTION: Motioned by Board Member Baber (La Mesa) and seconded by Board Member West (Imperial Beach) to approve Consent Calendar Item 1. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)
No: None
Abstained: None
Absent: None

REGULAR AGENDA

2. OPERATIONS AND ADMINISTRATION REPORT FROM THE INTERIM EXECUTIVE OFFICER

Interim Executive Officer Hooven provided an update on the status of the various vendor requests for proposals (RFPs), staff workload, the policy matrix, the Community Advisory Committee recruitment process, the memorandums of understanding with the City of La Mesa and City of San Diego for support services, staff discussions with SDG&E, and the status of SDG&E's minimum rate proposal.

ACTION: Following Board discussion, it was the consensus of the Board to extend the application deadline for the Community Advisory Committee recruitment.

Chair Mosca (Encinitas) provided an update on the recruitment process for the SDCP Executive Director.

Board questions and comments ensued.

Micah Mitrosky, IBEW Local 569, spoke regarding the proposed 2020 policy matrix.

3. RESOLUTION ADOPTING A DELEGATED CONTRACT AUTHORITY POLICY

Interim Executive Officer Hooven provided an overview of the Resolution and explained the purpose for a delegated contract authority policy. Interim Executive Officer Hooven summarized the best practices of delegated contract authority policies.

Assistant General Counsel Norvell stated the best practices of other CCA's were considered when creating the policy and the policy only applies to non-energy procurements.

Board questions and comments ensued.

Shawn Marshall, Executive Director, Lean Energy US, explained the importance of a delegated contract authority policy.

ACTION: Motioned by Vice Chair Padilla (Chula Vista) and seconded by Board Member West (Imperial Beach) to adopt a Resolution adopting a delegated contract authority policy for administrative contracting purposes. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

No: None

Abstained: None

Absent: None

4. APPROVAL OF AGREEMENT WITH PACIFIC ENERGY ADVISORS FOR SAN DIEGO COMMUNITY POWER ENERGY CONSULTING SERVICES

Interim Executive Officer Hooven provided an overview of the bidding and selection process for SDCP consulting services and reviewed the duration and cost of the agreement.

Interim Executive Officer Hooven introduced Sam Kang, Managing Director, Pacific Energy Advisors, who provided an overview of Pacific Energy Advisors' experience with Community Choice Aggregations.

Board questions and comments ensued.

ACTION: Motioned by Board Member Baber (La Mesa) and seconded by Board Member Montgomery (San Diego) to approve an Energy Consulting Services Agreement with Pacific Energy Advisors for a 3-year term beginning March 2020 through March 2023, and delegate execution of the agreement to the Interim Executive Officer. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

No: None

Abstained: None

Absent: None

5. APPROVAL OF AGREEMENT WITH LEAN ENERGY US FOR ONGOING IMPLEMENTATION SERVICES

Interim Executive Officer Hooven provided an overview of the agreement with Lean Energy US for ongoing implementation services.

Board questions and comments ensued.

ACTION: Motioned by Board Member Baber (La Mesa) and seconded by Vice Chair Padilla (Chula Vista) to approve an Implementation Services Agreement with LEAN Energy US for a one-year term retroactive to January 1, 2020 through December 31, 2020 with an option to extend. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

No: None

Abstained: None

Absent: None

6. APPROVAL OF THE SAN DIEGO COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

Interim Executive Officer Hooven provided an overview and explained the purpose of the San Diego Cooperation and Administrative Services Agreement.

Board questions and comments ensued.

Assistant General Counsel Norvell stated the Board may add a meet and confer clause into the agreement at a future meeting.

Board questions and comments continued.

ACTION: Motioned by Board Member Montgomery (San Diego) and seconded by Vice Chair Padilla (Chula Vista) to authorize the execution of the Cooperation and Administrative Services Agreement with City of San Diego, providing certain services to San Diego Community Power by the City and reimbursement to the City of these services, as amended, to add a meet and confer clause into the agreement pursuant to Section 7.3.2(a) of the San Diego Community Power Joint Powers Agreement. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

No: None

Abstained: None

Absent: None

7. FORMATION AND APPOINTMENT OF THE FINANCE AND RISK MANAGEMENT COMMITTEE

Interim Executive Officer Hooven explained the role of the Finance and Risk Management Committee.

Assistant General Counsel Norvell stated the SDCP Joint Powers Agreement allows for alternates to serve on the Finance and Risk Management Committee as replacements for the primary Committee Member.

Board questions and comments ensued.

ACTION: Motioned by Chair Mosca (Encinitas) and seconded by Vice Chair Padilla (Chula Vista) to establish the Finance and Risk Management Committee and appoint Board Member West (Imperial Beach) and Board Member Baber (La Mesa) to serve on the Finance and Risk Management Committee until December 2020. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

No: None

Abstained: None

Absent: None

DIRECTOR COMMENTS

There were no comments.

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

There were no reports.

ADJOURNMENT

Chair Mosca (Encinitas) adjourned the meeting at 5:56 p.m.

Megan Wiegelman, CMC
Interim Board Clerk

SAN DIEGO COMMUNITY POWER
Staff Report – Item 2

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Operations and Administration Report from the Interim Executive Officer

Date: April 23, 2020

Recommendation

Receive update on various operational and administration activities and file this report.

Analysis and Discussion

Staff will provide regular updates to the Board of Directors regarding San Diego Community Power's (SDCP) organizational development, administration and start-up activities. The following is a brief overview of this month's discussion items, which are informational only.

A) COVID-19 Impact

While the decision was made to cancel the March Board meeting, SDCP activities remain on track. Staff and our consultants are collectively monitoring potential impacts to startup activities in light of the economic impacts of this global pandemic and will keep the Board apprised if any concerns arise.

B) Vendor Request for Proposals (RFPs)

The remaining RFP for the near-term is for marketing and communication services, expected to be released this week with a 30 day bid deadline.

C) Discussions with San Diego Gas & Electric (SDG&E) and Other Compliance Matters

Staff and SDCP consultants, including Pacific Energy Advisors, have met several times with various SDG&E staff to discuss coordination needs and opportunities for collaboration. Areas of discussion include load forecasting, integrated resource planning, resource adequacy, etc. A variety of filings and proceedings at the California Public Utilities Commission (CPUC) will require information from and close coordination between SDCP and SDG&E. Meetings included a "meet and confer" requirement related to the year-ahead resource adequacy forecast, as well as an additional meeting and other communication to discuss the options for RA power procurement, as SDG&E will have an excess RA available once SDCP starts service. SDG&E intends to issue a Request for Offers (RFO) in the coming months to manage this excess power. SDCP, Pacific Energy Advisors, and BB&K (SDCP's legal counsel) are preparing to respond to this RFO.

In these meetings, SDG&E also reaffirmed a January 2021 operational start of their new bill system replacement project, known as Envision. This system will be critical to SDCP's own launch, and SDCP's data management firm will be a key partner in testing this system prior to our launch.

To ensure coordination, SDCP provided SDG&E with our resource adequacy forecast for 2021, in advance of filing it with the State by the April 20 deadline. This forecast is used to determine RA procurement requirements for load serving entities including SDCP.

SDCP also filed for an extension with the CPUC through May 31, 2020 to submit materials related to the CCA registration packet required by Resolution E-4907. These materials include a \$100,000 bond payment, a draft customer notice, and an executed CCA Service Agreement with SDG&E. The \$100,000 bond payment along with the other registration materials, will be submitted once SDCP completes the credit and banking agreement and has confirmed funding.

D) Regulatory Update

The California Public Utilities Commission (CPUC) has broad regulatory authority over the energy sector in California, including partial jurisdiction over Community Choice Aggregation (CCA) programs. SDCP and other CCA program customers are regularly affected by CPUC decisions regarding power resources, rates, financial obligations and data retention among other things. The regulatory update (attached) includes CPUC proceedings that are currently active and will have an impact on SDCP. This is not an exhaustive list. Staff and Tosdal, APC will continue to monitor or engage in these proceedings, and other regulatory activities, as needed to ensure SDCP's interests are represented. Staff from Tosdal, APC will be available at the Board meeting to provide additional details.

Attachments:

Attachment A: April Regulatory Update

ENERGY REGULATORY UPDATE

To: Cody Hooven, Executive Officer, San Diego Community Power

From: Ty Tosdal, Regulatory Counsel, Tosdal, APC

Re: Energy Regulatory Update

Date: April 17, 2020

Dear Ms. Hooven:

The energy regulatory update summarizes important decisions, orders, notices and other developments that have occurred at the California Public Utilities Commission (“Commission”) and that may affect San Diego Community Power (“SDCP”). The summary presented here is not an exhaustive list of the regulatory proceedings that are currently being monitored or the subject of active engagement by SDCP. In addition to the proceedings discussed below, Tosdal, APC monitors a number of other regulatory proceedings as well as related activity by San Diego Gas & Electric (“SDG&E”) and other Investor-Owned Utilities (“IOUs”).

1. Power Charge Indifference Adjustment (R.17-06-026)

Power Charge Indifference Adjustment (“PCIA”) Working Group 3, which is co-chaired by the California Community Choice Association (“CalCCA”) and Southern California Edison (“SCE”), issued its Final Report (“Report”) on February 21, 2020. The Report recommends that the Commission adopt a process by which power and certain power attributes are allocated by IOUs to Community Choice Aggregation (“CCA”) programs to meet the goal of portfolio management or optimization. Under the proposal, power that remains available after the allocation process would be made available on the open market to CCA programs or other buyers. Adoption of the proposal would permit CCA program customers to realize the benefit of resources they currently pay for through PCIA charges, but are unable to rely upon for their power needs because the contracts remain in the utility portfolio.

Along with a number of other parties, SDCP submitted comments and reply comments on the Report, which can be found in Attachment A. SDCP’s comments support the adoption of both consensus and non-consensus proposals in the Report related to Renewable Portfolio Standard (“RPS”) and Resource Adequacy (“RA”) allocations. The comments also support shareholder responsibility for mismanagement of utility portfolios when applicable rules are violated. Finally, SDCP’s comments stress the need for transparency and Commission oversight throughout the allocation process outlined in the Report.

2. Resource Adequacy (R.17-09-020, R.19-11-009)

The Commission issued a Proposed Decision on March 26, 2020, in one of the operative RA proceedings, R.17-09-020, rejecting a settlement proposal advanced by CalCCA and SDG&E to adopt a residual central procurement model for local RA. The settlement proposal would permit utilities and CCA programs to continue buying their own local RA and rely upon a central buyer as needed. The Proposed Decision finds that the settlement proposal is not reasonable in light of the whole record or supported by several affected parties, does not present a fair compromise, and did not identify a central buyer.

Instead, the Proposed Decision adopts a hybrid central procurement model in PG&E and SCE territories, and identified these IOUs as the central buyers responsible for the purchase of local RA. SDG&E, however, was exempted from central procurement because SDG&E's transmission area is unique in that local RA requirements typically meet or exceed the system requirements. A central buyer that procures all local capacity in the San Diego local areas would leave no system or flexible capacity for CCA programs or other Load Serving Entities ("LSEs") to purchase.

3. Integrated Resources Planning (R.16-02-007)

The Commission issued a Final Decision, D. 20-03-028, on March 28, 2020, that adopts a reference portfolio for all LSEs, including CCA programs, to use in conjunction with the preparation of their individual Integrated Resource Plans ("IRPs"). D. 20-03-028 was controversial for maintaining the previous IRP cycle's Greenhouse Gas ("GhG") emissions target of 46 Million Metric Tons ("MMT"). The Decision also extends the IRP filing deadline to September 1, 2020.

4. SDG&E Application to Eliminate Seasonal Rates (A.19-09-014)

The Commission voted on April 16, 2020, to eliminate seasonal rates for SDG&E's tiered residential customers, beginning on June 1, 2020. Winter rates for this class of customers will increase by 4.1 percent and summer rates will decrease by 4.6 percent. The Final Decision also provides that similar changes will be considered for residential Time-of-Use ("TOU") customers in the next phase of the proceeding.

5. SDG&E Advice Letters 3523-E and 3524-E Regarding Bundled Procurement Plan

SDG&E submitted two advice letters on March 27, 2020, seeking to expand its ability to enter into contracts under its Bundled Procurement Plan ("BPP"). Under the BPP, which was approved in 2015, SDG&E may enter into contracts but is not required to obtain Commission approval as long as the contract duration is less than 5 years, the delivery period ends within a 10-year time period, and other applicable rules are followed. Specifically, SDG&E AL 3523-E seeks approval to extend the upper limits for RA or capacity contracts under its BPP. AL 3524-E seeks approval to extend the time horizon for contracts for another five years beyond 2024.

SDCP filed two letters of protest with the Commission on April 16, 2020, which can be found in Attachment A, requesting that the Commission deny the requests on procedural

grounds. The protest of AL 3523-E recommends that a capacity limitation that reflects departing load should be included in any future approval of SDG&E's request, and that a different advice letter process should be followed that involves Commission review as opposed to staff review alone. The protest of 3524-E recommends that SDG&E address the issues related to extending the time horizon for contracts under the BPP in the IRP proceeding, where departing load can be considered, rather than the advice letter process, which does not permit parties to engage in discovery or examine witnesses.

Attachment A

San Diego Community Power Regulatory Filings and Related Materials



FILED

03/13/20
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Review, Revise,
and Consider Alternatives to the Power Charge
Indifference Adjustment

Rulemaking 17-06-026

**COMMENTS OF SAN DIEGO COMMUNITY POWER
ON THE WORKING GROUP 3 REPORT**

Ty Tosdal
Tosdal, APC
777 South Highway 101, Suite 215
Solana Beach, CA 92075
Telephone: (858) 704-4711
E-mail: ty@tosdalapc.com

March 13, 2020

Attorney for San Diego Community Power

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Review, Revise,
and Consider Alternatives to the Power Charge
Indifference Adjustment

Rulemaking 17-06-026

**COMMENTS OF SAN DIEGO COMMUNITY POWER
ON THE WORKING GROUP 3 REPORT**

I. Introduction

San Diego Community Power (“SDCP”) submits these comments on the final report of Power Charge Indifference Adjustment (“PCIA”) Working Group 3 (“Working Group 3 Report” or “Report”)¹ in the above-captioned proceeding, pursuant to the *Administrative Law Judge’s Ruling Modifying Proceeding Schedule*, dated January 22, 2020. SDCP appreciates the substantial time and effort of the co-chairs, California Community Choice Association (“CalCCA”), Southern California Edison (“SCE”) and Commercial Energy, as well as other contributing parties, in developing the detailed and thoughtful proposals contained in the Report. If adopted, these proposals would represent a major step forward with respect to management of Investor-Owned Utility (“IOUs”) portfolios in light of departing load. SDCP supports adoption of the consensus proposals contained in the report, as well non-consensus items designed to implement these measures in the near term, specifically RPS and RA allocations, but has some concerns about the assignment process and the absence of shareholder responsibility provisions. Given the complexity of portfolio optimization and the concerns expressed below, regular and

¹ *Final Report of Working Group 3 Co-Chairs: Southern California Edison Company (U-338E), California Community Choice Association, and Commercial Energy (“Report”), February 21, 2020, R. 17-06-026.*

detailed reporting on the Request for Interest (“RFI”) process is critical to obtaining timely information about the progress of these measures. With this information in hand, implementation should be closely monitored by the California Public Utilities Commission (“Commission”) for unintended consequences and adverse effects on energy providers and markets. Revisions to the process may be necessary in the future to achieve desired results.

II. Background

SDCP is a new CCA program that will serve customers in the City of San Diego, City of Encinitas, City of La Mesa, City of Chula Vista, and the City of Imperial Beach beginning next year. Reducing the greenhouse gas (“GhG”) emissions at competitive rates is the driving factor in the formation of SDCP and that goal is supported by the Climate Action Plans (“CAP”) of its member cities. SDCP was formed when member cities formed a Joint Powers Authority on October 1, 2019. SDCP submitted an Implementation Plan and Statement of Intent to the Commission on December 23, 2019, and intends to begin serving customer load in March 2021.

III. Consensus Proposals Should Be Adopted with Regular and Detailed Reporting about the Request for Interest Process

SDCP supports the consensus proposals contained in the Report. Allocations paired with market offers for several types of energy products currently in the IOU portfolios will provide a path for CCA program customers to benefit from resources that they currently pay for through the PCIA. At the same time, the process will benefit bundled customers by right sizing IOU portfolios and reducing costs. The consensus proposals have been vetted, analyzed and extensively discussed and negotiated. While SDCP has some concerns about the assignment process, discussed further below, which has great potential to be a cost-effective and efficient mechanism to make portfolio adjustments, and the lack of shareholder responsibility provisions, consensus proposals should nevertheless be adopted.

The various processes described in the Working Group 3 Report are new approaches, and it is apparent that detailed reporting, particularly regarding RFI implementation, is critical for purposes of Commission oversight and the success of portfolio optimization.² Monitoring the process and making necessary adjustments along the way should be a top priority. Without timely disclosure of data and other information by the IOUs, close supervision cannot be performed, adjustments to the process cannot be made, and effective portfolio optimization may not come to pass.

IV. Implementation of RPS and RA Allocations Should Occur in the Near Term

The RPS and RA allocation proposals in the Working Group 3 Report can and should be implemented as soon as practicable, i.e., in the near term, following the Commission's decision on these matters.³ From a practical standpoint, there appear to be no major barriers to RPS allocations that do not jeopardize IOU compliance with RPS obligations being performed so that delivery can occur in 2021. Procedurally, allocations can be approved through a motion to update RPS plans, as CalCCA suggests.⁴ Adopting this schedule will permit the portfolio optimization process to reach its goals sooner rather than later, and save customers the associated costs of portfolio misalignment.

SDCP also supports the adoption of the process for Local and System and Flex RA allocations beginning in 2021 for the 2022 System and Flex RA compliance year and the 2023 and 2024 Local RA compliance years.⁵ To the extent that IOU portfolios already include excess RA relative to their customer needs, moving forward in the near term should be more efficient

² See, e.g., Report at 56, 64.

³ *Id.* at 63.

⁴ *Id.*

⁵ *Id.* at 61-62.

and cost effective than waiting until a later time, permitting the portfolio adjustment process to move forward in a timely fashion that benefits bundled and departing customers alike.

V. Assignment Is a Powerful Tool and Should Be Adopted, but the Process May Require Objective Standards and Criteria to Be Effective at Scale

Assignment of contracts has the potential to be powerful tool for portfolio optimization and SDCP supports taking steps toward adoption of a viable assignment mechanism. From a legal standpoint, assignment enables the LSE providing retail customers with power to enter into a direct relationship with counterparties supplying power, without the legal complications and risk factors associated with third parties. It also provides the proper allocation of risk and incentives between contracting parties. Practically, assignment permits contracts to be managed by the LSE responsible for serving customers with the associated power available under the contract, rather than a party that is not directly responsible for those customers. Finally, properly supervised assignment may provide bundled and unbundled customers with the most efficient and low cost means of portfolio optimization relative to other options.

While the Commission’s endorsement of an assignment mechanism would be a positive step and provide the IOUs with explicit authorization to move forward, the process outlined in the Report contains certain elements that give rise to concerns about whether it will be an effective tool at scale.⁶ The proposal envisions a process by which an IOU serves as matchmaker between counterparties and CCA programs, beginning with the IOU gauging interest and obtaining minimum requirements from potential sellers, informing the market of interest and seeking out LSEs that may be interested for additional discussions.⁷ The IOUs will then “*match Interested Sellers with Prospective Buyers meeting the Interested Seller’s minimum requirements*

⁶ See Report at 54 - 57.

⁷ *Id.* at 54.

and allow the Potential Buyers and Interested Sellers the opportunity to negotiate a Contract Assignment.”⁸ The IOUs have “discretion” to accept or reject any proposed transactions or arrangements.⁹ The number of transactions will be capped at 20 per RFI.¹⁰

Time will tell, but SDCP is concerned that the process may not go far enough in establishing objective standards or criteria for assignment to be viable. Without such standards, it is possible that the IOUs are able to exercise unilateral discretion or subjective criteria at multiple points in the process, and perhaps even veto transactions that may benefit customers. Furthermore, in that event, the Commission would have limited ability to evaluate IOU decisions against any guidance or standards. Granted, the IOUs are parties to the contracts at issue and have certain legal rights under them. At the same time, the Commission has broad authority to structure an assignment process in light of departing load trends that includes objective standards and guidance.

These concerns reinforce the need for a robust RFI reporting process that is frequent and includes detailed information about the assignment process, as recommended in the Report.¹¹ Notification about seller outreach and contacts, contracts assigned or otherwise modified, PCIA impacts, contracts in negotiations, and net customer value are critical to evaluating the success of the process. Particularly important, the Report recommends that a list of assignment proposals rejected by the IOU also be included. Additional details about the basis for rejection and some means of verification or further review should also be considered by the Commission as part of

⁸ *Id.* (emphasis added).

⁹ *Id.* at 55.

¹⁰ *Id.*

¹¹ *Id.* at 56.

the reporting process. With the information contained in RFI reporting, the Commission will be able to closely observe the assignment process and make any necessary adjustments.

VI. Shareholder Responsibility Is a Critical Component of Portfolio Management

The Report does not recommend any new or modified provisions related to IOU shareholder responsibility.¹² Whether approved in the near term or at some point in the future, however, a mechanism for shareholders to share the cost of inadequate portfolio management is important and should be adopted. Shareholders enjoy the benefits of the utility business enterprise, and like any other investor or business owner, must share the costs as well. Without cost exposure, IOU shareholders and management have little incentive to right size IOU portfolios to meet reduced customer numbers and manage costs accordingly. Ratepayers are not insurers and should not be held solely responsible for avoidable costs.

VII. Conclusion

SDCP asks the Commission to take these comments into consideration and adopt the consensus and other proposals from the Report discussed above. SDCP looks forward to further dialogue with the parties and Commission on portfolio management issues.

Respectfully submitted,

/s/ Ty Tosdal

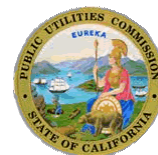
Ty Tosdal
Tosdal, APC
777 South Highway 101, Suite 215
Solana Beach, CA 92075
Telephone: (858) 704-4711
E-mail: ty@tosdalapc.com

March 13, 2020

Attorney for San Diego Community Power

¹² *Id.* at 64.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

03/27/20
04:59 PM

Order Instituting Rulemaking to Review, Revise,
and Consider Alternatives to the Power Charge
Indifference Adjustment

Rulemaking 17-06-026

**REPLY COMMENTS OF SAN DIEGO COMMUNITY POWER
ON THE WORKING GROUP 3 REPORT**

Ty Tosdal
Tosdal, APC
777 South Highway 101, Suite 215
Solana Beach, CA 92075
Telephone: (858) 704-4711
E-mail: ty@tosdalapc.com

March 27, 2020

Attorney for San Diego Community Power

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Review, Revise,
and Consider Alternatives to the Power Charge
Indifference Adjustment

Rulemaking 17-06-026

**REPLY COMMENTS OF SAN DIEGO COMMUNITY POWER
ON THE WORKING GROUP 3 REPORT**

I. Introduction

San Diego Community Power (“SDCP”) submits these reply comments on the final report of Power Charge Indifference Adjustment (“PCIA”) Working Group 3 (“Working Group 3 Report” or “Report”)¹ in the above-captioned proceeding. These reply comments address the Hybrid Allocation Framework advanced by San Diego Gas & Electric (“SDG&E”) in its comments on the Working Group 3 Report.² Contrary to SDG&E’s arguments, the allocation and market processes in the Report are consistent with prior guidance from the Commission in this proceeding. The Hybrid Allocation Framework is unworkable and should be rejected because it would result in uncertainty and compromise the ability of Community Choice Aggregation (“CCA”) programs to meet procurement goals and compliance obligations.

¹ *Final Report of Working Group 3 Co-Chairs: Southern California Edison Company (U-338E), California Community Choice Association, and Commercial Energy (“Report”),* February 21, 2020, R. 17-06-026.

² *Comments of San Diego Gas & Electric Company (U 902 E) on the Phase Two, Working Group Three Final Report (“SDG&E’s Comments”),* March 13, 2020, R. 17-06-026.

II. Allocation Mechanisms Proposed in the Working Group 3 Report Are Consistent with Commission Guidance in D.18-10-019 Regarding Excess Supply

Contrary to SDG&E's arguments,³ the allocation and market mechanisms proposed in the Working Group 3 Report are consistent with the guidance provided by the Commission in D.18-10-019.⁴ That decision uses the terms "excess supply" and "excess resources" at various points, as do parties in their comments and briefs quoted by the Commission,⁵ but these terms are never explicitly defined or explained in any detail. The use of them in D.18-10-019 does not dictate or imply any specific methodological approach. Rather, the terms are descriptive in nature, capturing the basic fact that with departing load, Investor-Owned Utilities ("IOUs") now hold supply that exceeds the demand of bundled customers. For example, the Commission stated the following in its discussion of Utility Owned Generation: "Recognizing that parts of the IOU portfolio are in excess of bundled customers' needs, phase two of this proceeding will work toward portfolio optimization and cost reduction."⁶

The allocation and market-based mechanisms in the Working Group 3 Report are designed to address this problem, with explicit language from the Commission endorsing the potential of the approach: "The record in this proceeding indicates that allocation and auction mechanisms offer realistic and promising approaches to utility portfolio optimization and cost reduction."⁷ Reading D. 18-10-019 to preclude allocation as proposed in the Working Group 3 Report requires one to ignore statements like these, but they cannot simply be ignored. The

³ SDG&E's Comments at 2-4.

⁴ *Decision Modifying the Power Charge Indifference Adjustment Methodology*, October 19, 2020, Decision (D.) 18-10-019.

⁵ See, e.g., D. 18-10-019 at 18, 43, 72, 102.

⁶ D. 18-10-019 at 59.

⁷ D. 18-10-019, Finding of Fact 26, at 156.

Commission did not foreclose the possibility of an allocation process like the one described in the Report and instead left open a number of possibilities to meet the goals of the proceeding.

III. The Hybrid Allocation Framework Would Create Uncertainty and Compromise the Ability of CCA Programs to Meet Their Goals and Compliance Obligations

The Hybrid Allocation Framework would create a high degree of uncertainty by requiring CCA programs like SDCP to accept allocations of resources with little advanced warning as to the volume or quantity of the allocation, the type of resource or the timing of the allocation. The process would expose CCA programs and their customers to an unpredictable cycle of surprise allocations and costs. Under SDG&E's plan, sound resource planning and financial management would be impossible, undermining the ability of CCA programs to meet their resource goals and compliance obligations.

SDG&E envisions an annual process that applies to "excess resources" that exist after bundled service customer needs are met and any additional portfolio optimization has occurred. An IOU would determine its excess portfolio based on its PCIA-eligible vintage portfolio net of its bundled customer compliance needs and any portfolio optimization activities that may have occurred since the prior year.⁸ The IOU would then make its "excess portfolio resources" available to market participants in the bilateral market, and if any excess remains unsold when final obligations are provided by the Commission, then the IOU would allocate the remainder unsold excess products to all Load-Serving Entities ("LSEs"), including bundled service customers, on a peak load ratio basis.⁹ SDG&E's Comments elaborates on this process by

⁸ SDG&E's Comments at 5.

⁹ SDG&E's Comments at 5-6.

providing illustrative examples for different types of products such as Resource Adequacy (“RA”) and Renewable Portfolio Standard (“RPS”) eligible products.¹⁰

Under SDG&E’s plan, however, the resources that will be allocated each year is anyone’s guess. The size and type of the allocation depend on the portfolio management activities that the IOU undertakes in the bilateral market, which will most likely vary year to year, or may not occur at all. The allocation also depends on an IOU’s determination of “excess supply” but the Hybrid Allocation Framework does not provide a clear or objective methodology to make this determination. The process will result in a resource allocation that is uncertain in total amount, resource type and cost.

CCA programs will then have to accept a mandatory allocation of resources subject to these conditions, and since the process is annual, will have limited time to adjust their portfolios when the allocations are made. Sound resource planning, which involves balancing various considerations and careful planning years in advance, would be impossible. The uncertainty that would result from adoption of the Hybrid Allocation Framework would expose departing load customers to a portfolio that is constantly shifting in makeup and cost, compromising the ability of CCA programs to meet resource goals and compliance obligations. For these reasons, it should be rejected.

IV. Conclusion

SDCP respectfully asks the Commission to take these comments under consideration, reject the Hybrid Allocation Framework and adopt the proposal contained in the Working Group 3 Report.

¹⁰ See SDG&E’s Comments at 6-15.

Respectfully submitted,

/s/ Ty Tosdal

Ty Tosdal
Tosdal, APC
777 South Highway 101, Suite 215
Solana Beach, CA 92075
Telephone: (858) 704-4711
E-mail: ty@tosdalapc.com

March 27, 2020

Attorney for San Diego Community Power

April 16, 2020

Sent Via E-Mail

Mr. Ed Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenue, Room 4004
San Francisco, CA 94102

RE: SAN DIEGO COMMUNITY POWER'S PROTEST OF SAN DIEGO GAS & ELECTRIC COMPANY'S ADVICE LETTER 3523-E REGARDING BUNDLED PROCUREMENT PLAN CAPACITY PROCUREMENT LIMITS

Dear Mr. Randolph:

Pursuant to General Order 96-B, San Diego Community Power ("SDCP") submits this protest to San Diego Gas & Electric Company's ("SDG&E") Advice Letter ("AL") 3523-E regarding bundled procurement plan capacity procurement limits. In AL 3523-E, SDG&E seeks authorization to extend the capacity limits set forth in its Bundled Procurement Plan ("BPP"), which was approved by the California Public Utilities Commission ("Commission") in Decision ("D.") 15-10-031. SDCP agrees in most respects with SDG&E about the status of prior Commission approvals related to its BPP and related decisions at issue in AL 3523-E. However, SDG&E seeks to increase its capacity limits without identifying a new capacity limit, or any applicable limitations for that matter. Granting the request would provide SDG&E with broad authorization to enter into capacity contracts without adequate Commission guidance or oversight and create the potential for adverse consequences.

Procurement undertaken by SDG&E pursuant to Commission authorization of AL 3523-E in its current form, should that occur, may result in unnecessary costs and increase rates for bundled customers, exacerbate problems in the Resource Adequacy ("RA") market and unnecessarily complicate or frustrate the portfolio optimization process under consideration in the Power Charge Indifference Adjustment ("PCIA") proceeding.¹ Furthermore, SDCP is planning to launch and begin serving customers next year, and the expansion of SDG&E's capacity portfolio without limitation may result in unwarranted increases in non-bypassable charges in the form of PCIA and Cost Allocation Mechanism ("CAM") charges. For these reasons, the Commission should:

¹ *Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment ("PCIA")*, Rulemaking ("R.") 17-06-026, June 29, 2017.

(1) deny the advice letter without prejudice, (2) instruct SDG&E to resubmit a modified request for authority to extend the capacity limits in its BPP that demonstrates the need and includes explicit capacity limitations tied to forthcoming departing load forecasts in the RA proceeding, or alternatively load forecasts in the Integrated Resource Plan (“IRP”) proceeding,² which will account for the departure of hundreds of thousands of customers in its territory beginning in 2021, and (3) further instruct SDG&E to submit the request as a Tier 3 Advice Letter subject to review by the Commission.

BACKGROUND

The Commission last approved SDG&E’s BPP in 2015 in D. 15-10-031.³ As SDG&E notes in AL 3523-E, the Commission proceeding that addressed BPPs, the Long-Term Procurement Plan (“LTPP”) proceeding,⁴ was subsequently closed and remaining BPP issues were transferred to the Integrated Resource Plan (IRP) proceeding, pursuant to Decision (“D.”) 16-06-042. The Commission has not yet determined how to address BPPs in the Integrated Resource Plan (“IRP”) proceeding.⁵ Subsequently, in a separate proceeding, the Commission established a three-year forward requirement for local RA in D.19-02-022.

Following these decisions, SDCP was formed by the participating cities of San Diego, Chula Vista, Encinitas, Imperial Beach and La Mesa.⁶ The program will launch and begin serving load in 2021, and at full enrollment, SDCP will serve a total of approximately 740,000 customer accounts currently served by SDG&E.⁷ SDCP is actively engaged in a number of steps to develop its program, including resource planning designed to meet its Resource Adequacy (“RA”) obligations and contribute to maintaining reliability. SDCP is also in the process of developing its rate structure, which must take into account the PCIA and CAM charges that will be charged to its

² See *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements*, R. 16-02-007, February 11, 2016.

³ D. 15-10-031, October 23, 2015.

⁴ R. 13-12-010.

⁵ R. 16-02-007.

⁶ See *San Diego Community Power Community Choice Aggregation Implementation Plan and Statement of Intent* (“SDCP Implementation Plan”), December 9, 2019.

⁷ SDCP Implementation Plan at 22.

current and potentially future customers should the program expand beyond its current roster of participating cities.⁸

PROTEST

Pursuant to General Order (“GO”) 96-B, SDCP files this protest against AL 3524-E on the grounds that (1) the request contained in the advice letter is not authorized by Commission order, (2) the issue raised in the advice letter is pending before the Commission in a formal proceeding, (3) the request requires consideration is inappropriate for a Tier 1 advice letter, and finally (4) that the relief requested is unjust, unreasonable, or discriminatory.⁹ Accordingly, AL 3524-E should be denied without prejudice for the reasons explained below.

A. Approval of AL 3523-E Without Limitation May Result in Capacity Transactions That Are Disproportionate to SDG&E’s Future Load and Expose Bundled Customers to Uncertain Costs and Rate Increases

SDG&E’s request to increase capacity limits under its BPP omits critical information that renders the request vague and unclear. Namely, AL 3523-E does not identify a capacity limit for the Commission to consider or approve. Instead, SDG&E seeks authority to increase capacity limits apparently without limitation. Procurement under an open-ended authorization of this nature may result in unreasonable cost increases for bundled customers. Customers may be surprised by rate increases associated with new RA procurement that come with little warning, and furthermore, they may also have to shoulder the burden of higher rates that the Commission did not necessarily foresee or intend to approve. A more prudent course of action is to review and approve any increase that SDG&E demonstrates is necessary subject to an explicit capacity limit that reflects the capacity needs of bundled customers. Upcoming load forecasts for RA purposes, which account for departing load, and related methods for calculating RA requirements can inform the process of establishing an upper limit for capacity in SDG&E’s BPP.

B. Granting SDG&E’s Request May Exacerbate Problems in the Local Resource Adequacy Market Specific to the San Diego Area

The Commission has been working to resolve a number of important issues in the RA market as of late, including an important set of issues related to local RA. One

⁸ In addition to SDCP, Clean Energy Alliance (“CEA”), a CCA program for the cities of Carlsbad, Del Mar, and Solana Beach, submitted its Implementation Plan and Statement of Intent on December 23, 2019.

⁹ GO-96B, General Rule 7.4.2, (2), (4), (5), (6).

such issue that the Commission has identified concerns constraints in the local RA market in the San Diego region, where deficiencies have been identified in the peak months between July and September.¹⁰ In fact, SDG&E has filed a waiver request in connection with its local RA obligation.¹¹

While SDG&E may require authorization to meet certain RA obligations, granting the request to extend capacity limits without specific limitation, or further guidance on that point from the Commission, may exacerbate local RA problems in the San Diego region. Specifically, SDG&E may pursue local RA resources that exceed the amount required to serve its future load, leaving little in the way of available resources for other LSEs. With SDCP and CEA entering the RA market this year in order to secure RA for their respective launches next year, the local RA market may become constrained even further. Alignment of load forecasts, like those required in the RA and IRP proceedings, with capacity needs is an important part of preventing an existing problem from being further made worse.

C. An Outsized Capacity Portfolio May Unnecessarily Complicate or Frustrate Portfolio Optimization Under Consideration in the PCIA Proceeding

Portfolio optimization is currently under consideration in the PCIA proceeding, where various proposals have been made to address changes to utility portfolios to account for departing load.¹² Eliminating the capacity limits contained in SDG&E's current BPP, which is effectively what AL 3523-E requests, may unnecessarily complicate or frustrate the process that the Commission ultimately adopts, regardless of whether that process involves allocations, assignments or other processes designed to achieve the Commission's goals. Without further Commission guidance, when the time comes to implement portfolio optimization measures, SDG&E may have procured far more capacity than is needed, and the optimization process will be saddled by a portfolio that is larger in volume and more complex than necessary. This problem can

¹⁰ *State of the Resource Adequacy Market*, September 2019 at 5.

¹¹ SDG&E AL 3457-E, Confidential Request Of San Diego Gas & Electric Company for Waiver of 2020-2021 Local Procurement Obligations, October 31, 2019.

¹² See, e.g., Final Report of Working Group 3 Co-Chairs: Southern California Edison Company (U-338E), California Community Choice Association, and Commercial Energy, R. 17-06-026, February 21, 2020 (discussing the Voluntary Auction and Market Offer and related processes); *Comments of San Diego Gas & Electric Company (U 902 E) On The Phase Two, Working Group Three Final Report*, March 13, 2020, R. 17-06-026, at 4-15 (describing the Hybrid Allocation Proposal); *Opening Comments of Pacific Gas and Electric Company (U 39 E) on the Power Charge Indifference Adjustment Phase 2, Working Group #3 Final Report*, March 13, 2020, R. 17-06-026, at 15-22 (describing the Attribute Distribution Framework).

be prevented by Commission guidance that focuses attention on alignment between SDG&E's capacity portfolio and its future load, taking into account the load that will depart for CCA service with the launch of SDCP and CEA.

D. Lack of Commission Guidance May Result in San Diego CCA Customers Paying the Price for Unnecessary Capacity through PCIA and CAM Charges

Like all CCA customers, SDCP customers are obligated to pay the PCIA, and like all customers, they are also required to pay CAM charges. Capacity costs contribute to these charges, and excess capacity procured by SDG&E pursuant to authorization of AL 3523-E in its current form could drive up these charges unnecessarily on customers that are currently planning to depart SDG&E service, or unanticipated customers that seek to depart bundled service and join SDCP in the future. Excess capacity of this type would also lack proper justification, and would provide no benefit to bundled customers to the extent that it exceeds their needs. The potential for unjustified PCIA and CAM charges weighs against approval of SDG&E's request.

CONCLUSION AND RECOMMENDATIONS

While SDG&E may require additional authorization to meet its RA obligations, SDCP recommends for the reasons stated above that the Commission: (1) deny AL 3523-E without prejudice, (2) instruct SDG&E to submit a modified request for authority to extend the capacity limits in its BPP that demonstrates the need for new authorization and includes explicit capacity limitations tied to forthcoming departing load forecasts in the RA proceeding, or alternatively the IRP proceeding, which account for the departure of hundreds of thousands of customers in its territory beginning in 2021, and finally, (3) further instruct SDG&E to submit the request in the form of a Tier 3 Advice Letter subject to proper review by the Commission.

Respectfully,

/s/ Ty Tosdal

Ty Tosdal
Tosdal, APC
777 S. Highway 101, Suite 215
Solana Beach, CA 92075
(858) 252-6416
ty@tosdalapc.com

Attorney for San Diego Community
Power

Copy (via e-mail): CPUC Energy Division (EDTariffUnit@cpuc.ca.gov)
Megan Caulson, SDG&E (mcaulson@semprautilities.com)
Service Lists: R.13-12-010 and R.16-02-007

April 16, 2020

Via E-Mail

Mr. Ed Randolph
Director, Energy Division
California Public Utilities Commission
505 Van Ness Avenue, Room 4004
San Francisco, CA 94102

Re: San Diego Community Power's Protest of San Diego Gas & Electric Company Advice Letter 3524-E Requesting to Extend Procurement Authority Pursuant to Assembly Bill 57

Dear Mr. Randolph:

Pursuant to General Order ("GO") 96-B, San Diego Community Power ("SDCP") files this protest to San Diego Gas & Electric Company's ("SDG&E") Advice Letter ("AL") 3524-E titled *Request to Extend Procurement Authority Pursuant to San Diego Gas & Electric Company's Assembly Bill 57 Bundled Procurement Plan*.¹ SDG&E seeks authorization to extend its procurement authority beyond the 10-year procurement horizon established in its current Bundled Procurement Plan ("BPP"). Under the BPP, which was approved in 2015, SDG&E is not required to obtain separate Commission approval for contracts lasting fewer than 5 years if the delivery period ends within a 10-year time horizon and other applicable rules are followed.² The procurement authorization period under SDG&E's BPP is set to expire in 2024, and SDG&E now seeks to extend the time period by an additional five years so that it may continue to enter into contracts without filing a separate application.

Granting the extension requested by SDG&E would provide authorization to enter into contracts without adequate guidance or oversight from the Commission that should take place through review and approval of an updated BPP. Much has changed since SDG&E's last BPP was approved, including substantial load departure that is now planned by SDCP and other CCA programs in SDG&E territory,³ and the expansion of Direct Access ("DA"). Commission oversight of the bundled procurement process is necessary to prevent excessive procurement and minimize the possibility of unnecessary cost exposure to CCA and DA customers through the Power Charge Indifference Adjustment ("PCIA"). The authorization sought in AL 3524-E is also

¹ AL-3524-E was submitted on March 27, 2020.

² Decision ("D.") 15-10-031, October 23, 2015.

³ In addition to SDCP, Clean Energy Alliance ("CEA"), a CCA program for the cities of Carlsbad, Del Mar, and Solana Beach, submitted its Implementation Plan and Statement of Intent on December 23, 2019.

improper because the relief requested is pending in a formal proceeding and is inappropriate for the advice letter process. Instead, the extension of SDG&E's BPP authorization should be addressed in the Integrated Resource Plan ("IRP") proceeding, as the Commission previously indicated such issues would be reviewed.⁴ Accordingly, AL 3524-E should be denied with prejudice and SDG&E should be directed to address the issue in the IRP proceeding.

BACKGROUND

Historically, the California Public Utility Commission ("Commission") used long-term procurement planning ("LTPP") proceedings to address ongoing issues associated with BPPs.⁵ Approval of an Investor-Owned Utility's ("IOU") BPP authorizes the IOU to execute procurement contracts with a duration of less than five years without prior approval by the Commission if delivery ends within the 10-year procurement cycle.⁶ The Commission established this rule to preserve active procurement oversight during the "out-years" (i.e., Years 6-10) of the LTPP planning horizon.⁷ The rule ensures that IOU procurement practices do not result in: (1) over-hedging; (2) acquisition of excessive fossil fuel resources or contracts that are incongruent with Greenhouse Gas ("GhG") emission reduction goals or other policy objectives; and (3) acquisition of resources or contracts that may not be needed for future load because of load forecast error or load migration to direct access or CCA programs.⁸

On October 22, 2015, the Commission issued D.15-10-031 approving SDG&E's current BPP and extending the IOU's procurement authority through the 10-year LTPP procurement period ending on December 31, 2024.⁹ In accordance with the Commission's contract pre-approval rules, SDG&E's BPP acknowledges that the IOU may enter a contract of under five years without pre-approval if deliveries end at any point within the 10-year procurement cycle.¹⁰

On June 23, 2016, in D.16-06-042, the Commission closed R.13-12-010 and transferred the remaining issues to the IRP proceeding, R.16-02-007. The Commission opened this proceeding to continue ongoing LTPP responsibilities while addressing new obligations associated with integrated resource planning required by Senate Bill ("SB") 350.¹¹ The Commission included BPP review in the LTPP proceeding's scope to

⁴ Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements, Rulemaking ("R.") 16-02-007, February 11, 2016.

⁵ D. 16-06-042 at 1.

⁶ D. 07-12-052 at 172.

⁷ *Id.* at 171.

⁸ *Id.*

⁹ R.16-02-007 at 7.

¹⁰ SDG&E BPP, Sheet No. 51.

¹¹ D.16-06-042 at 2.

address any specific issues pertaining to grid reliability, costs, or GHG reduction efforts that require timely action.¹²

Following these decisions, SDCP was formed by the participating cities of San Diego, Chula Vista, Encinitas, Imperial Beach and La Mesa.¹³ The program will launch and begin serving load in 2021, and at full enrollment, SDCP will serve a total of approximately 740,000 customer accounts currently served by SDG&E.¹⁴ SDCP is actively engaged in a number of steps to develop its program, such as resource planning. SDCP is also in the process of developing its rate structure, which must take into account PCIA charges that will be charged to its current and potentially future customers, should the program expand beyond its current roster of participating cities.

PROTEST

SDCP files this protest against AL 3524-E on the grounds that: (1) The relief requested in the advice letter is not authorized by Commission order, (2) the issues raised in the advice letter are pending before the Commission in a formal proceeding, (3) the request contained in the advice letter requires consideration in a formal hearing, or is otherwise inappropriate for the advice letter process, and finally, (4) the relief requested is unjust, unreasonable, or discriminatory.¹⁵

A. Facts and Circumstances Have Changed Since the Commission Last Approved SDG&E's Bundled Procurement Plan

Since SDG&E's BPP was last approved, three new Community Choice Aggregation ("CCA") programs, including SDCP, have formed and plan to begin serving load in SDG&E service territory beginning in 2021. San Diego Community Power ("SDCP") and Clean Energy Alliance ("CEA")¹⁶ will begin serving load in SDG&E service territory beginning in 2021.¹⁷ Commission oversight of SDG&E's short-term and medium-term procurement contracts will help prevent the risk that SDG&E will unnecessarily expand its portfolio and expose unnecessary costs on CCA customers through PCIA charges.

¹² R.16-02-007 at 3, 25.

¹³ See San Diego Community Power Community Choice Aggregation Implementation Plan and Statement of Intent ("SDCP Implementation Plan"), December 9, 2019.

¹⁴ SDCP Implementation Plan at 22.

¹⁵ See GO-96B, General Rule 7.4.2, (2), (4), (5), (6).

¹⁶ Customers currently served by Solana Energy Alliance ("SEA"), the first CCA program to be launched in SDG&E territory, will be served by Clean Energy Alliance beginning in 2021.

¹⁷ See [San Diego Community Power Community Choice Aggregation Implementation Plan and Statement of Intent](#), December 9, 2019; [Clean Energy Alliance Community Choice Aggregation Implementation Plan and Statement of Intent](#), December 19, 2019.

Furthermore, the Commission has opened R.19-03-009 to implement Senate Bill (“SB”) 237, which increases the permissible load served by DA providers.¹⁸ In that proceeding, the Commission increased the maximum allowable annual limit for statewide DA transactions by 4,000 gigawatt hours, and 9.5% of that amount was apportioned to SDG&E service territory.¹⁹ As part of Phase 2 of the DA proceeding, the Commission is considering whether to recommend that the legislature further increase DA access.²⁰ Commission oversight of short-term and medium-term procurement contracts will similarly help prevent the risk that SDG&E will unnecessarily expand its portfolio and impose unnecessary costs on DA customers through PCIA charges.

B. The Commission Should Reject SDG&E’s Request and Address Issues Related to BPPs in the IRP Proceeding

SDG&E seeks to move the ten-year mark established in D.15-10-031 so that it can continue entering short-term and medium-term procurement contracts without Commission pre-approval. In D.07-12-052, the Commission explicitly expressed its desire to monitor procurement practices during years 6-10 of the procurement cycle to avoid certain risks.²¹ The ten-year time period was adopted to maintain that goal while providing IOUs with some flexibility in procuring for net short positions.²² As such, extending SDG&E’s procurement authority is inconsistent with the Commission’s previous decisions and stated goals.

Considering the load departure that will occur with the formation of CCA programs and the expansion of the DA program, Commission oversight of SDG&E’s short-term and medium-term contracts is especially important. Rejecting SDG&E’s request will not prevent SDG&E from entering contracts with a term of less than five years, but require that instead, SDG&E seek Commission approval for these short-term contracts, or alternatively address the issue in the IRP proceeding. This will allow the Commission to achieve the goals established in D.07-12-052 and ensure SDG&E does not hedge or procure beyond what is needed to serve its future load.

C. The Relief Requested in the Advice Letter is Pending Before the Commission and Should Be Formally Addressed in the IRP Proceeding

As SDG&E states in AL 3524-E, the Commission has not yet addressed the manner or timing of how BPPs should be revised or otherwise addressed in the IRP proceeding. There is no dispute that the Commission included BPP updates and review in the proceeding’s scope.²³ Since BPP updates and revisions remain within the scope

¹⁸ See Order Instituting Rulemaking to Implement Senate Bill 247 Regarding Direct Access and to Consider Changes to Existing Direct Access Procedures, R.19-03-009, March 14, 2019.

¹⁹ D.19-05-043, May 30, 2019, at 6.

²⁰ D.19-05-043 at 27.

²¹ D.07-12-052 at 171.

of the proceeding and the Commission has not yet decided on these issues, they are currently pending before the Commission in the IRP proceeding. As such, SDG&E should not be granted an extension of its BPP authority through an advice letter.²⁴

In AL-3524-E, SDG&E states that approval of the request will ensure its ability to continue to effectively meet procurement needs in accordance with the “upfront and achievable” standards required by AB 57.²⁵ SDG&E fails to acknowledge that, pursuant to AB 57, codified in Public Utilities Code section 454.5, the Commission approved the current BPP with the 2024 sunset year and oversight limitation. Since SDG&E had notice that the limitations would apply through the end of the time period, i.e., in through 2024, it is unclear why the IOU can no longer “effectively and efficiently meet” procurement needs in accordance with these particular standards.²⁶

SDG&E’s request for an extension in its BPP authority goes beyond the type of update or modification appropriate for an advice letter. SDG&E points out that since approval of the current BPP, SDG&E has filed various advice letters updating aspects of its BPP.²⁷ However, these updates and modifications are largely in accordance with other Commission decisions or contemplated in the current BPP.²⁸ In contrast, the 10-year procurement period has been addressed in the LTTP, and now in its successor proceeding, the IRP proceeding, and not the advice letter process.²⁹

CONCLUSION

While an advice letter is not adequate for SDG&E’s proposal, SDG&E can file a motion in the IRP proceeding to address the issues that it has raised in AL-3524. As stated above, the Commission retained BPP review within the scope of the current IRP proceeding. Accordingly, SDCP urges the Energy Division to deny AL-3524 with prejudice and instead direct SDG&E to address these issues in the IRP proceeding.

Respectfully,

/s/ Ty Tosdal

Ty Tosdal
Tosdal, APC

²³ OIR at 25.

²⁴ See GO-96B, General Rule 7.4.2(4).

²⁵ AL-3524-E at 2.

²⁶ *Id.*

²⁷ SDG&E AL-3524-E at 1, FN 2.

²⁸ See AL-3476-E; AL-3322-E; SDG&E BPP, Sheet No. F-10.

²⁹ See R.16-02-007 at 7.

TOSDAL APC

777 S. Highway 101, Suite 215
Solana Beach, CA 92075
(858) 252-6416
ty@tosdalapc.com

Attorney for San Diego
Community Power

Copy (via e-mail): CPUC Energy Division (EDTariffUnit@cpuc.ca.gov)
Megan Caulson, SDG&E (MCaulson@sdge.com)
Service Lists: R.13-12-010, R.16-02-007

SAN DIEGO COMMUNITY POWER
Staff Report – Item 3

To: San Diego Community Power Board of Directors

From: Executive Search Subcommittee – Joe Mosca, Chair and Steve Padilla, Vice Chair
Shawn Marshall, LEAN Energy US

Subject: Subcommittee Update on CEO Recruitment and Next Steps

Date: April 23, 2020

Recommendation

Receive report and provide direction as needed.

Background

At its meeting on February 27, 2020, the SDCP Board appointed Chair Mosca and Vice Chair Padilla to serve as Board representatives on its ad-hoc executive search subcommittee. The subcommittee is supported by Shawn Marshall of LEAN Energy US and the CEO recruitment is being led by Avery & Associates, an executive recruitment firm with decades of experience in public agency and executive recruitments.

Analysis & Discussion

Since the last Board meeting, the search team and recruiter have completed the following tasks:

- 1) Reviewed recruitment process and updated timeline (see below)
- 2) Completed stakeholder interviews to build candidate profile
- 3) Completed CCA CEO salary survey
- 4) Completed digital job posting and posted to a variety of industry sites on April 10
- 5) Issued press release to San Diego regional press outlets on April 14
- 6) Candidate outreach underway
- 7) Engaged the City of Encinitas HR Department for help with appropriate compensation packages and CEO contract/on-boarding process.

As of April 20, SDCP has received 14 candidate applications; the application deadline is May 20, 2020. Please note that the salary range in the job posting was left open and ‘dependent on qualifications’ (DOQ). Specific salary and benefits information will be discussed by the Board in closed session before the May Board meeting and we’ll know more about potential candidate requirements by then as well. Finally, we are working on a cooperative services agreement with the City of Encinitas to document and reimburse their HR staff time in support of the effort. This Agreement will be on the Board’s May agenda for approval.

The recruitment and hiring schedule has been updated as follows. Please note that we anticipate including a representative from SDCP’s CAC and a neighboring CCA CEO on the first round interview panel. The second (and third if needed) finalist interviews will be conducted by the SDCP Board in closed session as per the schedule outlined below:

Date	Action
March 2020	Development of candidate profile including stakeholder feedback; CCA CEO salary survey, develop job description and digital brochure
April 10 – May 20	Job formally posted; May 20 application deadline; recruitment and outreach underway
April 16	Kick-off call with City of Encinitas HR team for temporary HR support
April 23 Board Mtg	SDCP Board Update
Mid-May/Early June	Candidate screening for base qualifications; select top 15-20 for further vetting; select top 6-7 for first round interview
May 28 Board Mtg.	SDCP Board closed session to discuss CEO salary range and benefits options
Week of June 15	First-round interviews with top 6-7 candidates; selection of top 2-3 candidates for finalist interviews
June 25 Board Mtg.	Second round interviews with top 2-3 candidates; with full Board in closed session, prior to 6/25 Board meeting
Week of June 28	Final/third interview if needed; candidate selection
By Mid-July	Finalize CEO compensation package and employment agreement
July 23 Board Mtg.	Board Approves CEO Hire and Compensation Package in Open Session
August 2020	CEO On Boarding Process Begins

Attachments

Attachment A: SDCP CEO Digital Brochure/Posting

Attachment B: SDCP Press release

Attachment C: Recruitment update from Avery Associates (dated 4/15/20)

SAN DIEGO COMMUNITY POWER



INVITES YOUR INTEREST FOR THE POSITION OF:

CHIEF EXECUTIVE OFFICER

The San Diego Region

San Diego County is located in the southernmost region of California along the Pacific ocean stretching inland to the east toward high desert and mountain ranges. With a population of over 3.3 million people and 18 incorporated cities, the 4300 square mile region is the second most populous in the state of California and fifth most populous in the United States. San Diego is a unique mix of urban, suburban and rural communities, renowned for idyllic Mediterranean/semi-arid climate, 70 miles of pristine coastline, a strong US Naval presence, and a dazzling array of world-class family attractions.



Organization and Governance

San Diego Community Power (“SDCP”) is a California Joint Powers Agency formed on October 1, 2019 for the purpose of providing a Community Choice Aggregation (“CCA”) program which will serve approximately 930,000 residential and commercial electric accounts (7,200 GWh) in five communities including the Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa and San Diego. Through its CCA, SDCP will offer communities a pathway to 100% clean energy while also providing consumers energy choice and affordable electric rates.

Community Choice Aggregation (CCA) is a statewide program that allows cities, counties and other qualifying governmental entities to purchase and/or generate electricity for their residents and businesses. Once SDCP begins service operations, anticipated in Spring 2021, SDCP will purchase and/or generate electricity for its customers while SDG&E continues to deliver the electrical power and provide meter reading, billing, and line maintenance services. Customers will not notice any change other than a line item on their utility bill that replaces the SDG&E electric generation charges. For more information on SDCP and its plans, please visit www.sdcommunitypower.org.

SDCP is governed by a five-member Board of Directors, which consists of one primary Board member and one alternate Board member from the governing body of each participating jurisdiction in SDCP. The Board has elected a Chair and Vice Chair and has established two standing committees – a Finance and Risk Management Committee and a Community Advisory Committee. The Board may choose to expand should additional communities within San Diego County decide to join SDCP in the future.



The Board is publicly accountable to SDCP ratepayers and hosts monthly Board meetings to oversee program start-up, establish policy, determine power options, set and approve rates, and maintain fiscal oversight. As a public joint powers agency, SDCP is designed to be fully transparent with all meetings and information open to the public.

The Position of CEO

The new CEO will be a strategic leader that provides decisive and effective leadership for all aspects of the organization. The CEO will coordinate the launch and initial operations of the agency and is ultimately tasked with building SDCP into an innovative and effective

public organization that will benefit the residents and businesses of its member cities. This includes identifying and securing existing and alternative sources of power, establishing a formal rate structure, marketing SDCP to potential customers, and creating an administrative infrastructure to “jumpstart” and operationalize the entity including hiring and managing key positions within the organization.

This exciting opportunity will offer a dynamic and entrepreneurial executive an opportunity to help shape and build a start-up agency that will positively transform electric utility service in the San Diego region. The CEO will oversee all functions of Agency administration, including, but not limited to: finance, staffing, marketing and public affairs, power planning and procurement, supply operations, local energy programs, and regulatory and legislative affairs. A key aspect of this position is to foster and maintain strong relationships with the Board, city and state governments, customers, employees, the California Utilities Commission (CPUC), and other key stakeholders.

The Ideal Candidate

The ideal candidate will be a dynamic leader, capable of inspiring and developing a creative, innovative organization. He/she will have an impressive background in energy as well as knowledge of local government and a high level of political acumen. The new leader must be a seasoned executive with impressive management instincts and the gravitas to help guide SDCP’s strategic growth. The CEO will have a strong understanding of both the administrative and operational aspects of the position and have the necessary judgment and technical ability to recommend and implement policies and programs for San Diego Community Power.



A core component of this role will be in relationship building and relationship management with SDCP’s member cities, key community stakeholders well as its Board of Directors. Additionally, the executive will have to engage effectively with members of the community in order to effectively market the agency and its mission. This role will be highly outward facing during both the launch period and once operational to ensure that all partners feel heard and that the Agency is meeting the needs of its diverse customer base.

Managing the relationship with the Board of Directors and establishing a proactively communicative relationship will be essential for building trust. The ideal candidate will have sound judgment and be able to communicate complex policy recommendations effectively to

the Board and its Committees. Another key relationship that will require ongoing attention and savvy is SDCP’s service partner, San Diego Gas & Electric.

The new CEO will also be a highly accomplished executive with a proven track record of managing complex organizations, a strong leadership record as well as an ability to recruit and mentor talent. The individual must also be highly entrepreneurial and have clear vision for the agency, building a multidisciplinary team of staff and contractors that can effectively meet the challenges facing the organization. In building for the future, the ideal candidate must also be aware of current trends in the industry, especially in areas of power markets, regulatory changes and renewable energy. The new CEO must have sound policy and political judgment in order to ensure the agency is launched effectively and that the agency follows a sound course in the years to come. This will require knowledge of CA energy markets as well as a keen awareness of the current and changing regulatory climate at the State level.

A successful candidate will have impressive executive-level experience in California energy markets, large-scale power procurement, public or investor-owned utilities, other municipal utilities, renewable power development, and/or municipal executives with relevant experience. A Bachelor’s degree in a related field and a significant level of executive level leadership in a related private or public setting is required. A Master’s degree is highly desirable.

Compensation and Benefits

San Diego Community Power will offer a comprehensive and competitive salary and benefits package commensurate with industry experience and qualifications. The benefits program is currently under development and will be finalized after the new CEO is hired. The expectation is to provide a full array of competitive employee benefits, including a defined contribution plan. Please note that this and other positions to be hired by SDCP will not include a defined benefit retirement plan.



The Process

To be considered for this exceptional career opportunity, please visit the Avery Associates Career Portal on our website at www.averyassoc.net/current-searches/ to upload your letter of interest, resume, and contact information, including email addresses for five professional references (who will not be contacted until after an interview takes place).

Bill Avery or Sam Avery
Avery Associates
3 ½ N. Santa Cruz Ave, Suite A
Los Gatos, CA 95030
E-mail: jobs@averyassoc.net



The final filing date for this recruitment is: May 20, 2020.

If you have any questions or wish to further explore this opportunity, please contact Bill Avery at bill@averyassoc.net or 408 399-4424 or Sam Avery at samuela@averyassoc.net or 408.399.4424.

San Diego Community Power



FOR IMMEDIATE RELEASE

April 14, 2020

SAN DIEGO COMMUNITY POWER OPENS RECRUITMENT FOR CHIEF EXECUTIVE OFFICER

San Diego, Calif.—San Diego Community Power (SDCP) is a newly formed public agency based in San Diego that will launch a Community Choice Aggregation (CCA) program in 2021. SDCP's CCA will serve approximately 930,000 residential and commercial electric customers within the cities of San Diego, Encinitas, Chula Vista, La Mesa and Imperial Beach. SDCP will offer its communities a pathway to 100% clean energy while also providing customers energy choice and affordable electric rates.

SDCP is announcing its recruitment for the position of Chief Executive Officer (CEO). The CEO is tasked with building SDCP, which is in early formation, into an innovative and effective local energy enterprise that will employ up to 30 people and benefit the residents and businesses of the San Diego region.

To be considered for this career opportunity, please visit the Avery Associates Career Portal at www.averyassoc.net/current-searches/ to upload your letter of interest, resume, and contact information, including email addresses for five professional references. The job posting can also be found on SDCP's website at www.sdcommunitypower.org/resources. The final filing date for this recruitment is May 20, 2020.

###

For further information:

Candidate Questions: Bill Avery, Recruitment Contact - bill@averyassoc.net

Media Questions: Joe Mosca, Chairman, SDCP – jmosca@encinitasca.gov

San Diego Community Power – CEO Recruitment Update – April 15, 2020

The filing period has now opened and we have received **3 applications**. The brochure for this position has been approved and received from the printers. We have also begun posting this position online on targeted websites. We have also begun conducting our direct candidate outreach through our database, online research and through LinkedIn.

Lastly, we have also directly contacted all of the individuals on the list for stakeholder outreach. We have had **direct phone conversations with 6** of the individuals on the list and have followed up with those that we have been unable to speak to.

The main comment from the individuals that we have spoken to is the need for the individual to be an excellent relationship builder who is capable of working effectively with all of the communities that make up the agency, all of the various stakeholder groups including labor, the business community and environmentalists, as well as working well with all of the diverse customers. Additionally, many were concerned about SDG&E and feel the individual will need to be highly strategic in their relationship and dealings with them. There was also a strong desire for this individual to have strong knowledge of the regulatory climate in Sacramento and have effective relationship building skills those in the State government as well as the PUC. While there was a desire for knowledge of the utility market and how these organizations operate, the political skills of this position seemed by many to be the biggest hurdle they felt the new CEO would have to navigate. From a managerial perspective, the biggest need was seen to be an ability to recruit a highly talented workforce that can effectively help launch the agency.

Completed Tasks:

- Brochure was drafted, approved and received.
- Potential sources/candidates have been identified from our database and other sources.
- Brochure has been posted on the Avery website.
- Web postings were placed on: California City News, CSAC, Careers In Government, Jobs Available, Public Power, CMUA, NWPPA, MMANC, MMASC, Western City, LinkedIn and Cal-CCA

Pending Tasks

- Mail out brochure to lists and targeted candidates.
- Conduct candidate outreach through LinkedIn and email.
- **Close Date: May 20, 2020.**
- Identify individuals to be phone “qualified” to determine if appropriate for formal interviews with the firm.
- Conduct preliminary reference checks on the interviewed and recommended candidates.
- Prepare assessments and other materials for candidate presentations.
- Establish dates for both presentation of candidate recommendations and final interviews.



SAN DIEGO COMMUNITY POWER
Staff Report – Item 4

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego
Finance and Risk Management Committee – Directors Bill Baber and Mark West

Subject: Report from Finance and Risk Management Committee Meeting

Date: April 23, 2020

Recommendation

Receive Committee report and adopt recommendations regarding approval of banking and credit agreements and amended customer phasing schedule.

Background

At its meeting on February 27, 2020, the SDCP Board appointed Directors Bill Baber and Mark West to serve on the Agency’s Finance and Risk Management Committee (FRMC). The Committee held its first meeting virtually on Friday, April 17, 2020. Participants included SDCP interim executive officer and staff, consultants from PFM Financial Advisors, Pacific Energy Advisors and LEAN Energy, and representatives from River City Bank and Emerald Blue, LLC. Please see Attachment A to this report for a copy of the meeting agenda.

Analysis and Discussion

A) **Banking and Credit Agreements.** The Committee discussed the agreements with River City Bank which is proposed to provide SDCP depository services and a five-year working capital loan of \$35,000,000 inclusive of a \$5,000,000 pre-revenue secured line of credit. The Committee also discussed the \$5,000,000 collateral agreement with Emerald Blue, LLC which has agreed to provide the collateral for River City Bank’s \$5,000,000 pre-revenue line of credit.

Mike Berwanger from PFM, Rosa Cucicea from River City Bank and Tara Hammond from Emerald Blue were on hand to address Committee questions. A staff report on this topic is included here as part of Attachment A.

Committee Action: Committee members Baber and West passed a motion to recommend that the Board approve both River City Bank and Emerald Blue agreements, which will be discussed during item 9 on the April 23, 2020 Board agenda.

B) **Discussion and Direction on Rate Discount, Power Content and Phasing Plan.** The committee received a draft presentation from Pacific Energy Advisors that included a detailed market update, overview of regulatory compliance requirements and a discussion of the various portfolio “levers” that work together to achieve the financial, compliance and policy objectives of the Agency.

The Committee discussed a number of regulatory changes and market updates that will necessitate further analysis and Board direction going forward. However, the committee did achieve consensus regarding amendments to SDCP’s customer phasing schedule. These changes are modest and are recommended to better align with resource adequacy compliance obligations and costs and to absorb the revenue impacts of the CPUC’s recent decision to remove the seasonal differential from SDG&E residential rates.

A comparison of the phasing schedule outlined in SDCP’s implementation Plan vs. the currently recommended schedule is as follows:

SDCP Implementation Plan Schedule	Proposed Amended Schedule
<ul style="list-style-type: none"> a) March 2021: municipal accounts and potentially some commercial b) July 2021: commercial and industrial accounts c) November 2021: residential accounts 	<ul style="list-style-type: none"> a) March 1, 2021: municipal accounts b) June 1, 2021: medium and large commercial and industrial accounts c) January 1, 2022: Small commercial and residential accounts

The committee also discussed various renewable/carbon free portfolios and potential rate discount scenarios, but recognized that as market conditions are evolving, more analysis on these topics would be needed before further discussion or direction.

Committee Action: Committee members Baber and West passed a motion to recommend the amended customer phasing schedule as shown above. They also directed staff and consultants to conduct further analysis on power content and rate discount options to be considered by the Board in the coming months.

Attachments:

Attachment A: FRMC 4/17/20 meeting agenda and staff report

AGENDA

FINANCE AND RISK MANAGEMENT COMMITTEE SAN DIEGO COMMUNITY POWER (SDCP)

April 17, 2020

3:30 p.m.

DUE TO THE STAY AT HOME ORDER IN CALIFORNIA AND IN ACCORDANCE WITH THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20, MEMBERS OF THE FINANCE AND RISK MANAGEMENT COMMITTEE WILL BE PARTICIPATING REMOTELY FOR THIS MEETING AND THERE WILL BE NO LOCATION FOR IN-PERSON ATTENDANCE. 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 San Diego Community Power (SDCP) Finance and Risk Management Committee on any agenda item or on a matter not appearing on the agenda, but within the jurisdiction of the Committee. Public comments must be submitted using this ([web form](#)). Please indicate whether your comment is on a specific agenda item or a non-agenda item. When providing comments to the Committee, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Committee as a whole through the Chair. Comments are limited to four hundred (400) words on the form. If you have anything that you wish to be distributed to the Committee, please provide it to the Board Clerk via info@sdcommunitypower.org, who will distribute the information to the Members. It is requested that comments and other information be provided at least two (2) hours before the start of the Committee meeting. All comments received by such time will be provided to the Committee members in writing. In the discretion of the Chair, the first ten (10) comments received on each agenda item, or on non-agenda matters, may be read into the record at the meeting. Comments received after the two (2) hour limit will be collected, sent to the Committee members in writing, and be part of the public record.

The public may participate using the following remote options:

Teleconference Meeting Webinar

<https://zoom.us/j/94771266219>

Telephone (Audio Only)

(669) 900-6833 | Webinar ID: 947 7126 6219

CALL TO ORDER

ROLL CALL

ELECTION OF COMMITTEE CHAIR

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

PRESENTATION

NON-AGENDA PUBLIC COMMENTS

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 Agenda.

REGULAR AGENDA

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

- 1. Discussion and Recommendation on Credit and Banking Services and Collateral Agreements.**
 - a. Receive update and recommend Board approval of credit and banking services agreement with River City Bank.
 - b. Receive update and recommend Board approval of collateral agreement with Emerald Blue, LLC.

- 2. Discussion and Provide Direction on Rate Discount, Power Content, and Phasing Plan.**
 - a. Receive update and provide direction to staff and Pacific Energy Advisors on rate discount, power content, and phasing plan.

DIRECTOR COMMENTS

Committee Members may briefly provide information to other members of the Committee 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.

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

SDCP Management and General Counsel may briefly provide information to the Committee and the public. The Committee may engage in discussion if the specific subject matter of the report is identified below, but the Committee 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.

ADJOURNMENT

Compliance with the Americans with Disabilities Act

SDCP 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 (858) 492-6005 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 Committee Documents

Copies of the agenda and agenda packet are available at www.sdcommunitypower.org/committees. Late-arriving documents related to a Committee meeting item which are distributed to a majority of the Members prior to or during the Committee meeting are available for public review as required by law. Until SDCP obtains offices, those public records are 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, that is now suspended and can instead be made available electronically at info@sdcommunitypower.org. The documents may also be posted at the above website. Late-arriving documents received during the meeting are available for review by making an electronic request to the Board Secretary via info@sdcommunitypower.org.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 1

To: San Diego Community Power
Finance and Risk Management Committee

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Mike Berwanger, Managing Director
PFM Financial Advisors, LLC

Subject: Discussion and Recommendation on Credit and Banking Services and Collateral Agreements

Date: April 17, 2020

Recommendation

- Receive update and recommend Board approval of credit and banking services agreement with River City Bank.
- Receive update and recommend Board approval of collateral agreement with Emerald Blue, LLC.

Background

The City of San Diego, in service to San Diego Community Power (SDCP), retained PFM Financial Advisors (PFM) in March 2019 to provide financial advisory services in soliciting and finalizing credit and banking services for SDCP. At the December 3, 2019 Board meeting the SDCP Board of Directors directed staff and PFM to finalize negotiations with River City Bank for a credit facility and banking services for SDCP's start-up/operational financing and banking needs.

Analysis and Discussion

As part of their due diligence, River City Bank requested an updated pro forma. Due to changing market conditions, the updated pro forma reflected program changes and variances from the version provided with the credit and banking RFP. This prompted River City Bank to make a change to their offer and request collateral for the \$5 million startup costs in order to proceed. SDCP and PFM discussed at length the pros and cons of continuing with River City Bank or pivoting to the runner-up bank. Ultimately, SDCP decided that the risk of pivoting to another bank and the timing implications and unknown outcome of that outweighed the RCB request.

SDCP staff reached out to Emerald Blue, LLC (Emerald Blue), a local, philanthropic individual with interest in supporting local climate action, who had previously expressed interest in supporting SDCP.

SDCP staff and PFM had several discussions with Emerald Blue and River City Bank arrived at favorable terms to allow Emerald Blue to provide the requested \$5 million collateral. This accomplished SDCP's objective of not requiring JPA members to provide collateral. And this meets River City Bank's request. With the Emerald Blue commitment, River City Bank has reached final credit approval.

Key terms for the River City Bank agreement:

The River City Bank proposal outlined their offer of up to \$40 million Line of Credit for a 2-year term with an option to convert the line into a 3 year term loan. Half of the line would be made available for cash advances, and the remainder for Letters of Credit. River City Bank offered a floating rate calculated based on 1-Month LIBOR plus 2.00% (subject to floor rate of 2.00%) on the revolving line, and a 2.00% fee on any Letters of Credit.

Key terms from the Emerald Blue agreement:

Emerald Blue has offered to lend the \$5 million in collateral to SDCP that was requested by River City Bank. The loan will be subordinate to the River City Bank facility. The \$5 million will be held in an interest earning account, which will accrue until commercial operations commence, and will be released quarterly thereafter. SDCP will make interest only payments to Emerald Blue on a quarterly basis after operations have been launched at an interest rate calculated at 1-Month LIBOR plus 2.00%. Once the collateral requirement is released SDCP will repay the principal to Emerald Blue on a monthly basis for 36 months

Fiscal Impact

If the Board adopts the recommended agreements with River City Bank and Emerald Blue, LLC, San Diego Community Power will achieve its goals for receipt of startup and operational credit. By accepting collateral funding from a local investor, this relieves the need for any member city to provide collateral.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 5

To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel
Nicholaus Norvell, Assistant General Counsel

Subject: Review Draft SDCP Bylaws

Date: April 23, 2020

Recommendation

1. Discuss and provide direction on draft SDCP Bylaws
2. Direct staff to provide SDCP Member Agencies with a copy of the proposed Bylaws and place the Bylaws on a future SDCP agenda for final approval

Background

Under Section 3.2.12 of SDCP’s Joint Powers Agreement (JPA Agreement), the Board of Directors is authorized to adopt rules, regulations, policies, bylaws, and procedures governing the operation of SDCP.

Under the JPA Agreement, final approval of bylaws or bylaw amendments requires support from two-thirds of the Board. In addition, SDCP must provide Member Agencies with at least 30 days’ advance written notice of the adoption or amendment of SDCP’s bylaws.

Discussion and Analysis:

To supplement the JPA Agreement and provide clear procedures for the governance of SDCP, the General Counsel has prepared draft bylaws (“Bylaws”) for review and discussion by the Board of Directors. The proposed Bylaws are attached as Attachment A and contain articles concerning the following:

Article I	SDCP Formation
Article II	General Provisions, including purpose and definitions for Bylaws
Article III	Board of Directors, including provisions on Directors, alternates, resignation, vacancy, and compensation
Article IV	Board Officers and Terms of Office
Article V	Board Meetings, including provisions on closed session attendance, preparation of agendas, addition of agenda items by Board Members, public comments, meeting rules of order and procedures, and basic rules of debate and decorum
Article VI	Quorum and Voting

Article VII	Policy Regarding Confidential Information Disclosed During Closed Session, including limited authorization to share certain closed session information with the legal counsel and governing bodies of Member Agencies under specific circumstances
Article VIII	Board Committees, including appointment, voting in committees, participation of alternate Directors, removal of committee members, and ad hoc committees
Article IX	Chief Executive Officer
Article X	Procedures for Amending JPA Agreement and Bylaws

The Bylaws contain a number of provisions that mirror the terms of JPA Agreement and also provide supplemental procedures to assist with clear and efficient governance of SDCP. In the event of any conflict between the JPA Agreement and the Bylaws, the JPA Agreement would prevail.

As mentioned above, the JPA Agreement requires that SDCP’s Member Agencies be notified at least 30 days before the adoption or amendment of the Bylaws. For that reason, SDCP staff is seeking: (1) Board review and comment on the draft SDCP bylaws; and (2) direction for staff to provide Member Agencies with a copy of the proposed Bylaws and notify them that the Board will consider the Bylaws for final approval at an upcoming Board meeting. In the alternative, the Board can provide direction to bring a revised draft of the Bylaws back to the Board before notifying the Member Agencies and considering final approval.

Fiscal Impact:

None.

Attachment:

Attachment A: Initial Bylaws for San Diego Community Power

**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. When serving the absence of the primary Director, alternate Directors may 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 fiscal 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 fiscal 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

An annual meeting of the Board shall be held in July of each year or as soon thereafter as possible to 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, but 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, but such request must be supported by a Board Member. 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 that action. 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

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. 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
Staff Report – Item 6

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego
Ryan Baron, General Counsel
Nicholaus Norvell, Assistant General Counsel

Subject: Review and Approve SDCP Procurement Policy

Date: April 23, 2020

Recommendation

Adopt Resolution 2020-02 approving a Procurement Policy for SDCP.

Background

At the February 27 meeting of the SDCP Board of Directors, the 2020 Policy Matrix was approved. This matrix outlines a series of policies to be prepared by staff and brought to the Board for approval throughout 2020. Among those policies include the Agency Vendor and Contracting Policies (a.k.a. Procurement Policy), for San Diego Community Power. This item serves as the fulfillment of that policy proposal.

Discussion and Analysis:

To improve the operations and administration of SDCP, the enclosed Procurement Policy outlines a series of procedures and requirements for procurement of professional services, general services, and supplies.

With regard to other types of procurements, public works projects will be procured using the competitive bidding procedures mandated by California law. Power and energy attributes will be procured in accordance with SDCP's Risk Management Policy, which will be adopted at a future date. It should also be noted that this policy is separate from the Sustainable Workforce Policy, which staff plans to bring to the Board for approval also in 2020. This current policy is focused on procurements related primarily to professional services, general services, supplies, etc.

Fiscal Impact:

None.

Attachment:

Attachment A: SDCP Procurement Policy

Attachment B: Resolution 2020-02 Adopting the SDCP Procurement Policy

EXHIBIT “A”

San Diego Community Power Procurement Policy

Purpose

It is in the interest of San Diego Community Power (“SDCP”) to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

Policy

1. Procurement of Professional Services

SDCP may contract for professional services, including but not limited to consultant, legal, or design services, in its sole discretion. SDCP shall procure professional services in compliance with the Competitive Procurement Requirements in Section 5 of this Policy. SDCP shall endeavor to secure the highest quality professional services available and is not required to award a contract for services to the lowest proposer.

2. Procurement of General Services

SDCP may contract for general services, including but not limited to cleaning or maintenance services, in its sole discretion. SDCP shall procure general services in compliance with the Competitive Procurement Requirements in Section 5 of this Policy. Although SDCP shall not be required to award to the lowest proposer, SDCP staff shall seek to procure general services at the lowest costs.

3. Procurement of Supplies

SDCP shall procure supplies in compliance with the Competitive Procurement Requirements in Section 5 of this Policy. Although SDCP shall not be required to award to the lowest proposer, SDCP staff shall seek to purchase supplies at the lowest costs. SDCP is encouraged to jointly procure supplies with other governmental agencies to obtain the lowest cost when possible. In the event one or more SDCP employees are designated as purchasing agents, those individuals shall be included in SDCP’s Conflict of Interest Code as persons who must file an annual statement of economic interest.

4. Procurement of Public Works Projects

SDCP shall comply with California Public Contract Code Section 20160 *et seq.* and other applicable laws and regulations when procuring public projects in excess of \$5,000. For purposes of this section, a “public project” shall have the same meaning as defined in Public Contract Code Section 20160, and includes, among other things, projects for the erection, improvement, painting, or repair of public buildings and works.

EXHIBIT “A”

5. Competitive Procurement Requirements

- a. Formal Bidding. SDCP shall issue a request for proposals (RFP), a request for qualifications (RFQ), or similar competitive instrument for the purchase of goods or services in excess of \$125,000 in any given contract year or term. Proposals shall be evaluated in accordance with Section 7 of this Policy. These contracts are subject to Board approval before final execution.
- b. Informal Bidding Procedures.
 - i. For contracts valued between \$50,000 and \$124,999.99, staff shall solicit informal written proposals from at least three providers, if feasible. An informal written proposal consists of a written proposal that includes the provider’s name, address, phone number, professional license number (if applicable), the work to be performed, and the amount of the proposal. A written proposal may be in an electronic format.
 - ii. For contracts valued between \$10,000 and \$49,999.99, staff shall solicit informal verbal proposals from at least three providers. Staff shall note the three verbal proposals by including the provider’s name, address, phone number, and amount of the verbal proposal in SDCP’s records.
 - iii. For contracts valued at less than \$10,000, no formal or informal proposals shall be required, but SDCP staff is directed to seek the lowest cost supplies and the highest quality services available.
 - iv. The Chief Executive Officer (“CEO”), at his or her discretion, may direct that SDCP solicit competitive procurements through the formal bidding process for contracts under \$125,000.
- c. General Provisions. The provisions below shall apply to all methods of procurement described above.
 - i. When procuring goods and services utilizing state or federal funds (e.g., grant or loan funds), SDCP shall comply with all state or federal project requirements in securing any goods or services necessary. If there is conflict between the foregoing, the more restrictive requirements shall apply.
 - ii. SDCP shall not be required to award a contract to purchase goods or services from the lowest responsible bidder, unless required by California law.

EXHIBIT “A”

- iii. No SDCP officer or employee shall split purchases into more than one purchase in order to avoid the Competitive Procurement Requirements in this Policy.
- iv. No SDCP officer or employee shall accept, directly or indirectly, any gift, rebate, money or anything else of value from any person or entity if such gift, rebate, money or anything of value is intended to reward or be an inducement for conducting business, placing orders with, or otherwise using the officer’s or employee’s position to secure a contract with SDCP.

d. Exceptions to Competitive Procurement Requirements.

- i. Based on the unique facts or circumstances described below and a written justification retained in SDCP’s records, the CEO, after consultation with the General Counsel, may waive one or more purchasing procedures in this Policy and/or use sole source procurement if the CEO determines that the best interests of SDCP are served; provided, however, that such method is not in violation of applicable law or policy.

Sole source purchasing is authorized when the goods or services contemplated are capable of being supplied or performed by a sole provider, such as the holder of an exclusive patent or franchise, for purchase of unique or innovative goods or services including but not limited to computer software and technology, or for purchases of goods or services when there is a demonstrated need for compatibility with an existing item or service. Sole source procurement may also be utilized when it is apparent that a needed product or service is uniquely available from the source, or for all practical purposes, it is justifiably in the best interest of SDCP to utilize sole source procurement. The following factors shall not apply to sole source procurements and shall not be included in the sole source justification: personal preference for product or vendor; cost, vendor performance, or local service (this may be considered an award factor in competitive procurements); features that exceed the minimum requirements for the goods or services; explanation of the actual need and basic use for the equipment, unless the information relates to a request for unique factors.

- ii. No competitive procurement shall be required for goods or services valued at less than \$10,000 in any one contract term or contract year.
- iii. No competitive procurement shall be required to rent or lease equipment.

EXHIBIT “A”

- iv. Competitive procurement shall not be required when the contract, goods or services will be provided by another governmental agency. SDCP can rely on the competitive procurement process provided by another governmental agency, provided that such agency’s procurement is in compliance with California law.
- v. In the event of an emergency, the CEO may suspend the normal purchasing and procurement requirements for goods and services related to abatement of the impacts or effects of the emergency.

6. Signing Authority:

SDCP’s CEO and designated staff are authorized to execute contracts and related documents in accordance with SDCP’s Delegated Contract Authority Policy.

7. RFP/RFQ Issuance and Proposal Evaluation

- a. Proposals received through formal bidding procedures shall be subject to a set of criteria and a scoring system, reviewed and evaluated by relevant SDCP staff and an evaluation committee selected by the CEO or, at the discretion of the Board, members of a designated Board committee. Proposals received shall be evaluated based on competency to perform the scope of work, best fit, price competitiveness, compliance with subsections i (San Diego County Preference) and ii (Other Preferences) below, and other additional criteria added pursuant to SDCP’s Sustainable Workforce Policy. The preferences below may not apply to procurements conducted jointly with other public agencies, and shall not apply when prohibited by state or federal statutes or regulations that require award to the lowest responsible bidder.
 - i. SDCP desires to support San Diego County businesses where possible. Businesses with office(s) located in San Diego County and include at least 25% San Diego County residents under their employment shall receive a bonus of up to 5 points or 5% out of a 100-point scoring system in competitive solicitations.
 - ii. SDCP desires to support diversity among its contractors and vendors by working with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender-owned businesses. Businesses owned and operated by a person representing one or more of these categories shall receive a bonus of up to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
- b. SDCP is committed to the highest standards of responsible behavior and integrity in all of its business relationships. SDCP will consider a company’s business practices, environmental record, and commitment to fair employment practices and compensation in its procurement decisions.

EXHIBIT “A”

8. Nondiscrimination Contract Clause

Each SDCP contract and subcontract shall contain a nondiscrimination clause that reads substantially as follows:

Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

9. Procurement of Power and Energy Attributes

SDCP must secure sufficient power resources and energy attributes to serve its customers, comply with State law, and meet SDCP's and its member agencies' goals. SDCP may adopt a Risk Management Policy authorizing certain SDCP staff to enter into power purchase agreements and other agreements to secure power and energy attributes, provided that such agreements are in substantially the same form as the Board-approved master power purchase agreements, and that all transactions and agreements are in strict compliance with SDCP's Risk Management Policy.

10. Review and Approval as to Form by General Counsel

All SDCP agreements must be approved as to the form and content by the General Counsel or his/her designee prior to signature by any authorized individual.

RESOLUTION NUMBER 2020-02

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF SAN DIEGO COMMUNITY POWER
ADOPTING A PROCUREMENT POLICY**

WHEREAS, San Diego Community Power (SDCP) is a joint powers authority established in October 2019, pursuant to the San Diego Community Power Joint Powers Agreement (JPA Agreement) and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et. seq.); and

WHEREAS, SDCP members include the Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa and San Diego; and

WHEREAS, it is in the interest of SDCP to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings; and

WHEREAS, the Procurement Policy establishes formal and informal bidding procedures for SDCP's procurement of professional services, general services, and supplies, and specifies that SDCP shall comply with the competitive bidding requirements of California law when procuring public works projects.

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

1. The Board of Directors has determined the recitals herein are true and correct.
2. The Board of Directors hereby adopts Procurement Policy, attached hereto as Exhibit "A."
3. This Resolution shall be effective immediately after its adoption by the Board of Directors.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power on April 23, 2020.

ATTEST:

Joe Mosca, Chair, Board of Directors
San Diego Community Power

Megan Wiegelman, Secretary, Board of Directors
San Diego Community Power

SAN DIEGO COMMUNITY POWER
Staff Report – Item 7

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Adopt Resolution Approving a Policy to Delegate Authority to CEO for Regulatory and Legislative Matters

Date: April 23, 2020

Recommendation

Adopt attached Resolution 2020-03 and corresponding policy authorizing SDCP's Chief Executive to take positions on regulatory and legislative items when certain conditions are met.

Background

At its meeting on February 27, 2020, the SDCP Board received a summary report that provided an overview of the various Agency and CCA policies that it may wish to consider as SDCP continues through start-up and into operations. Policies addressing a range of topics will be established as needed to guide SDCP's various operational and customer practices. Policies may be adopted, amended or rescinded upon majority vote of the Board.

Analysis and Discussion

The attached policy delegating limited regulatory and legislative authority to the CEO is consistent with similar delegation of authority policies at several operational CCAs throughout California. The policy will allow SDCP's CEO to appropriately and timely respond to regulatory or legislative actions that may impact the mission and/or operations of SDCP. This policy is intended to delegate authority to the CEO and/or relevant designees when certain conditions are met. These include:

1. The regulatory, legislative, or other proposed action is directly related to and consistent with or will adversely impact SDCP's mission and operations.
2. Because of time constraints, bringing the matter to the Board of Directors at its next scheduled meeting is not practical.
3. The CEO has investigated and is aware of the positions, if any, of (1) other California CCAs and its trade association Cal-CCA; (2) state and federal legislators representing the San Diego region its cities, and (3) SDCP's member agencies.
4. The CEO has conferred with the Chair of the Board (or Vice Chair in the Chair's absence) and both the CEO and the Chair/Vice Chair agree that: (a) the position that the CEO intends to take is consistent with the mission of SDCP; (b) bringing the matter to the Board at its next scheduled meeting is not practical or appropriate under the

circumstances; and (c) taking the position without a vote of the Board is appropriate under the circumstances.

5. The CEO will report positions taken pursuant to this policy at the next regularly scheduled Board of Directors meeting as part of the CEO's Report or the Regulatory/Legislative Report.

Attachments

Attachment A: Resolution 2020-03

Attachment B: Policy on Delegation of Authority to CEO Regarding Regulatory and Legislative Matters

RESOLUTION NUMBER 2020-02

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF SAN DIEGO COMMUNITY POWER
AUTHORIZING DELEGATION OF AUTHORITY TO CEO FOR REGULATORY AND LEGISLATIVE
ACTIONS**

WHEREAS, San Diego Community Power (SDCP) is a joint powers authority established in October 2019, pursuant to the San Diego Community Power Joint Powers Agreement (JPA) and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et. seq.); and

WHEREAS, SDCP members include the Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa and San Diego; and

WHEREAS, SDCP seeks to delegate authority to its Chief Executive or designee to take regulatory and legislative action when certain conditions are met as set forth in the attached Policy.

WHEREAS, Policy #__ will allow SDCP's Chief Executive or designee to appropriately and timely respond to regulatory or legislative actions that may impact the mission and/or operations of SDCP. This policy is intended to ensure that SDCP maintains critical presence and influence at the State level.

WHEREAS, SDCP seeks to establish a Delegation of Authority to CEO for Regulatory and Legislative Matters Policy consistent with relevant local, state, and federal laws and regulations.

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

1. The Board of Directors has determined the recitals herein are true and correct.
2. The Board of Directors hereby adopts the Policy No.___: Delegation of Authority to CEO for Regulatory and Legislative Matters, attached hereto as Exhibit "A."
3. This Resolution shall be effective immediately after its adoption by the Board of Directors.

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power on April 23, 2020.

ATTEST:

Joe Mosca, Chair, Board of Directors
San Diego Community Power

Megan Wiegelman, Secretary, Board of Directors
San Diego Community Power

EXHIBIT "A"

SAN DIEGO COMMUNITY POWER

POLICY # _____

Delegation of Authority to CEO for Regulatory and Legislative Matters

Subject: Delegation of authority to Chief Executive Officer to take a position and/or action regarding regulatory and legislative matters of import to SDCP.

Purpose: On occasion, the Chief Executive Officer is approached with a time-sensitive request to take a position or action on a regulatory, legislative, or other governmental matter related to San Diego Community Power's mission and operations. This policy is intended to delegate authority to the Chief Executive Officer and/or relevant designee(s) to take necessary regulatory or legislative action consistent with SDCP's mission and goals when certain conditions are met.

Policy: San Diego Community Power hereby delegates authority to the Chief Executive Officer or relevant designee to sign regulatory or legislative documents or related materials on behalf of SDCP, when all of the following conditions are met:

1. The regulatory, legislative, or other proposed action is directly related to and consistent with or will adversely impact SDCP's mission and operations.
2. Because of time constraints, bringing the matter to the Board of Directors at its next regularly scheduled meeting is not practical.
3. Calling a special meeting of the Board to address the matter is neither practical nor necessary under the circumstances.
4. The CEO has investigated and is aware of the positions, if any, of (1) other California CCAs and its trade association Cal-CCA; (2) state and federal legislators representing the San Diego region its cities, and (3) SDCP's member agencies.
5. The CEO has conferred with the Chair of the Board (or Vice Chair in the Chair's absence) and both the CEO and the Chair/Vice Chair agree that: (a) the position that the CEO intends to take is consistent with the mission of SDCP; (b) bringing the matter to the Board at its next scheduled meeting is not practical or appropriate under the circumstances; and (c) taking the position without a vote of the Board is appropriate under the circumstances.
6. The CEO will report positions taken pursuant to this policy at the next regularly scheduled Board of Directors meeting as part of the CEO's Report or the Regulatory/Legislative Report.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 8

To: San Diego Community Power Board of Directors

From: Ryan Baron, General Counsel
Nicholaus Norvell, Assistant General Counsel

Subject: Adopt Resolution 2020-04 Approving the Conflict of Interest Policy for San Diego Community Power

Date: April 23, 2020

Recommendation

1. Adopt the SDCP Conflict of Interest Code and Resolution.
2. Authorize staff to execute the appropriate documents and submit the adopted Code to the Board of Supervisors of San Diego County as SDCP's code-reviewing body and request approval of the Code pursuant to Government Code Section 87303.

Background

The Political Reform Act (the "Act") requires all state and local government agencies to adopt and promulgate a conflict of interest code establishing the rules for reporting financial assets by certain agency officers, employees, and consultants. A conflict of interest code must specifically designate all agency positions, except those listed in Government Code Section 87200, that make or participate in making agency decisions which may foreseeably have an effect on any financial interest of that person, and assign specific types of financial assets to be disclosed that may be affected by the exercise of the powers and duties of that position.

Discussion and Analysis:

Attached is a copy of the proposed Conflict of Interest Code ("Code") for San Diego Community Power. By reference, this Code incorporates Section 18730 of the regulations of the Fair Political Practices Commission ("FPPC") as the provisions of the Code. This is commonly referred to as the FPPC Standard Code. The Code also contains an Appendix designating all SDCP positions that are anticipated to make or participate in making decisions of the Authority and assign appropriate disclosure categories, and lists the disclosure categories to be assigned. The Code includes certain positions based on SDCP's anticipated staffing plan; in the event a position title changes in the future, the Code can be updated following such change.

Notices of intent to adopt the Conflict of Interest Code were posted and provided as required by law.

Fiscal Impact:

None.

Attachments:

Attachment A: Conflict of Interest Code

Attachment B: Notice of Intention

Attachment C: Resolution 2020-04 of Adoption of Conflict of Interest Code

CONFLICT OF INTEREST CODE

OF

SAN DIEGO COMMUNITY POWER

CONFLICT OF INTEREST CODE OF SAN DIEGO COMMUNITY POWER

(Adopted April 23, 2020)

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730) that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730 and any amendments to it duly adopted by the Fair Political Practices Commission are hereby incorporated by reference. This regulation (attached) and the attached Appendix designating officials and employees and establishing disclosure categories, shall constitute the conflict of interest code of **San Diego Community Power (SDCP)**.

All officials and designated positions required to submit a statement of economic interests shall file their statements with the Board Secretary as SDCP's Filing Officer. The Board Secretary shall make and retain a copy of all statements filed by the Board of Directors and Executive Officer, and forward the originals of such statements to the Clerk of the Board of Supervisors of the County of San Diego. The Executive Officer shall retain the original statements filed by all other officials and designated positions and will make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008.)

APPENDIX
CONFLICT OF INTEREST CODE
OF
SAN DIEGO COMMUNITY POWER

(Adopted April 23, 2020)

PART “A”

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 Cal. Code of Regs. §18700.3(b), are NOT subject to SDCP’s Code but must file disclosure statements under Government Code Section 87200 et seq. [Regs. § 18730(b)(3)]

It has been determined that the positions listed below are Officials who manage public investments¹. These positions are listed here for informational purposes only.

Board of Directors

Chief Executive Officer / Interim Executive Officer

Treasurer/Chief Financial Officer

Investment Consultant

¹ Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by § 87200.

DESIGNATED POSITIONS

GOVERNED BY THE CONFLICT OF INTEREST CODE

DESIGNATED POSITIONS' TITLE OR FUNCTION

DISCLOSURE CATEGORIES ASSIGNED

Chief Operating Officer	4
Director/Manager of Procurement/Power Services	4
Director/Manager of Marketing & Communications	5
General Counsel	1, 2

Consultants and New Positions²

² Individuals serving as a consultant as defined in FPPC Reg. 18700.3(a) or in a new position created since this Code was last approved that makes or participates in making decisions must file under the broadest disclosure set forth in this Code subject to the following limitation:

The Chief Executive Officer / Interim Executive Officer may determine that, due to the range of duties or contractual obligations, it is more appropriate to assign a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734.) The Chief Executive Officer / Interim Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008.)

PART "B"

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of economic interests that the designated position must disclose for each disclosure category to which he or she is assigned. ³ "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of **SDCP**.

Category 1: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments.

Category 2: All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the boundaries of **SDCP**.

Category 3: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that are engaged in land development, construction or the acquisition or sale of real property within the jurisdiction of **SDCP**.

Category 4: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by **SDCP**.

Category 5: All investments and business positions in business entities, and sources of income, including gifts, loans and travel payments, that provide services, products, materials, machinery, vehicles or equipment of a type purchased or leased by the designated position's department, unit or division.

³ This Conflict of Interest Code does not require the reporting of gifts from outside this agency's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1)

NOTICE OF INTENTION TO ADOPT A CONFLICT OF INTEREST CODE OF SAN DIEGO COMMUNITY POWER

NOTICE IS HEREBY GIVEN that the Board of Directors of San Diego Community Power (“SDCP”) intends to Adopt a Conflict of Interest Code (the “Code”) pursuant to Government Code Section 87306.

The Code designates those employees, members, officers, and consultants who make or participate in the making of decisions and are subject to the disclosure requirements of the SDCP’s Code.

The proposed Code will be considered by the Board of Directors on April 23, 2020, at 5:00 p.m. during its remote meeting held pursuant to Executive Orders N-25-20 and N-29-20. Any interested person may observe the meeting and may submit written comments concerning the proposed Code.

Copies of the proposed Code, may be reviewed at as part of the agenda packet for the April 23, 2020 Board meeting. Copies of the proposed Code may be received by e-mailing info@sdcommunitypower.org.

Any comments or inquiries should be directed to or to the attention of Cody Hooven, Interim Executive Officer, San Diego Community Power c/o City of San Diego Sustainability Department, 1200 Third Avenue, Suite 1800, San Diego, CA 92101. Written comments must be received no later than 3:00 p.m. on April 23, 2020.

RESOLUTION NO. 2020-04

RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER ADOPTING A CONFLICT OF INTEREST CODE PURSUANT TO THE POLITICAL REFORM ACT OF 1974

WHEREAS, the State of California enacted the Political Reform Act of 1974, Government Code Section 81000 et seq. (the "Act"), which contains provisions relating to conflicts of interest which potentially affect all officers, employees and consultants of San Diego Community Power ("SDCP") and requires all public agencies to adopt and promulgate a Conflict of Interest Code; and

WHEREAS, the potential penalties for violation of the provisions of the Act are substantial and may include criminal and civil liability, as well as equitable relief which could result in SDCP being restrained or prevented from acting in cases where the provisions of the Act may have been violated; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Board of Directors, the proposed Conflict of Interest Code was provided each designated position and publicly posted for review at the offices of SDCP; and

WHEREAS, a public meeting was held upon the proposed Conflict of Interest Code at a regular meeting of the Board of Directors on April 23, 2020.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of San Diego Community Power that the Board of Directors does hereby adopt the proposed Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Chief Executive Officer / Interim Executive Officer, and available to the public for inspection and copying during regular business hours;

BE IT FURTHER RESOLVED that the said Conflict of Interest Code shall be submitted to the Board of Supervisors of the County of San Diego for approval and said Code shall become effective 30 days after the Board of Supervisors approves the proposed Conflict of Interest Code as submitted.

APPROVED AND ADOPTED this 23rd day of April, 2020.

Chair, Board of Directors
San Diego Community Power

ATTEST:

Secretary, Board of Directors
San Diego Community Power

SAN DIEGO COMMUNITY POWER
Staff Report – Item 9

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Mike Berwanger, Managing Director
PFM Financial Advisors, LLC

Glen Price, General Counsel, BB&K

Subject: Approval of Agreements with River City Bank and Emerald Blue for Credit and Banking Services

Date: April 23, 2020

Recommendation

1. Authorize the Interim Executive Officer to execute a Credit Agreement and related documents necessary to implement a \$35 million credit facility with River City Bank in a form approved by the Interim Executive Director and reviewed and approved as to form by the General Counsel. Related documents will include documents necessary to open accounts and obtain banking services from River City Bank as required by the Credit Agreement.
2. Authorize the Interim Executive Officer to execute a promissory note with Emerald Blue, LLC, to borrow \$5 million that will be used as cash collateral for the credit facility with River City Bank in a form approved by the Interim Executive Director and reviewed and approved as to form by the General Counsel.

Background

The City of San Diego, in service to San Diego Community Power (SDCP), retained PFM Financial Advisors (PFM) in March 2019 to provide financial advisory services in soliciting and finalizing credit and banking services for SDCP. At the December 3, 2019 Board meeting the SDCP Board of Directors directed staff and PFM to finalize negotiations with River City Bank for a credit facility and banking services for SDCP's start-up/operational financing and banking needs. The RFP sought up to \$40 million, however in the most recent pro forma, it was determined that a credit facility of up to \$30-35 million is sufficient. After extensive negotiations, general terms were agreed upon and BB&K (the law firm providing general counsel to SDCP) provided review and negotiation support for the financial agreements.

The funds that will be made available pursuant to the River City Bank credit facility will be used primarily for short term and long-term power purchase agreements and to provide collateral as

security for ongoing power procurement needs. The initial \$5 million in funding will be used to for working capital to support the full costs of start-up activities, including staffing, energy services, marketing, and compliance. While the City of San Diego has provided early support to SDCP in this initial startup period, startup activities are increasing and will continue until program launch in 2021 and require full funding as provided by a credit facility.

Analysis and Discussion

As part of their due diligence, River City Bank requested an updated pro forma. Due to changing market conditions, the updated pro forma reflected program changes and variances from the version provided with the credit and banking RFP. This prompted River City Bank to make a change to their offer and request collateral for the \$5 million startup costs in order to proceed. SDCP and PFM discussed at length the pros and cons of continuing with River City Bank or pivoting to the runner-up bank. Ultimately, SDCP decided that the risk of pivoting to another bank and the timing implications and unknown outcome of that outweighed the RCB request.

SDCP staff reached out to Emerald Blue, LLC (Emerald Blue), a local, philanthropic individual with interest in supporting local climate action, who had previously expressed interest in supporting SDCP.

SDCP staff and PFM had several discussions with Emerald Blue and River City Bank arrived at favorable terms to allow Emerald Blue to provide the requested \$5 million collateral. This accomplished SDCP's objective of not requiring JPA member cities to provide collateral. And this meets River City Bank's request. With the Emerald Blue commitment, River City Bank has reached final credit approval.

Full terms and conditions are provided in the attached agreements, which are in draft form and substantially complete, but still subject to ongoing negotiations between the lenders, the Interim Executive Director and General Counsel. The key business terms regarding interest rates, terms, and amounts are summarized below.

Key terms for the River City Bank agreement:

The Credit Agreement with River City Bank provides for a revolving credit facility of up to \$35 million for a 2-year term with an option to convert the revolving credit balance into a 3-year term loan in 2022. The funds would be made available for cash advances for working capital both pre and post commencement of operations and/or letters of credit that will be used for credit support in power purchase transactions. The amount of credit available will step up in increments of \$20 million and \$10 million upon SDCP meeting certain benchmarks for the commencement of residential and commercial operations. River City Bank offered a floating rate calculated based on 1-Month LIBOR plus 2.00% (subject to floor rate of 2.00%) on the revolving line, and a 2.00% fee on any Letters of Credit. SDCP and River City Bank have negotiated customary financial covenants based on the updated pro forma that SDCP will need to comply with during the term of the credit facility. The obligations of SDCP will be secured by a first priority security interest in the accounts, revenue and contracts of SDCP and SDCP will be required to place 10% of each advance in a loan reserve account. River City Bank will have the

right to take control of the reserve and operating accounts in the event of a default by SDCP. The obligation of River City Bank to make advances is subject to customary conditions and requirements, including an opinion letter from the General Counsel.

Key terms from the Emerald Blue agreement:

Emerald Blue has offered to lend the \$5 million that will be used as collateral by SDCP to fund a cash collateral account that was required by River City Bank. The loan will be subordinate to the River City Bank credit facility. The \$5 million will be held in an interest earning account, which will accrue until residential operations commence, and will be released quarterly thereafter. SDCP will make interest only payments to Emerald Blue on a quarterly basis after operations have been launched at an interest rate calculated at 1-Month LIBOR plus 2.00%, subject to SDCP's compliance with its financial covenants to River City Bank. The cash collateral requirement is subject to release conditions based on SDCP operations and profitability and once those conditions have been satisfied, the collateral will be released and used by SDCP to repay the principal balance to Emerald Blue. If the collateral is used by River City Bank, then SDCP will repay the principal to Emerald Blue in equal monthly payments over a period of 36 months when it is allowed to do so under the subordination agreement with River City Bank. The loan with Emerald Blue is unsecured.

Attachments:

Attachment A: Credit Agreement with River City Bank

Attachment B: Promissory Note with Emerald Blue, LLC

CREDIT AGREEMENT

Dated as of April __, 2020

by and between

**SAN DIEGO COMMUNITY POWER,
as Borrower**

and

**RIVER CITY BANK,
as Lender**

CREDIT AGREEMENT

This CREDIT AGREEMENT (this “*Agreement*”) is entered into as of April __, 2020, by and between **SAN DIEGO COMMUNITY POWER**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“*Borrower*”), and **RIVER CITY BANK**, a California corporation (“*Lender*”).

W I T N E S S E T H:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a credit facility which includes a revolving line of credit upon and subject to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION.

Section 1.1. Definitions. All capitalized terms used in this Agreement and not otherwise defined have the meanings ascribed to them on **Exhibit A**.

Section 1.2. Other Interpretive Provisions.

(a) Defined Terms. Unless otherwise specified herein or therein, all terms defined in this Agreement will have the same defined meanings when used in any certificate or other document made or delivered pursuant hereto. The meaning of defined terms is equally applicable to the singular and plural forms of the defined terms.

(b) References. The words “hereof”, “herein”, “hereunder” and words of similar import when used in this Agreement will refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, section, schedule and exhibit references are to this Agreement unless otherwise specified.

(c) Certain Common Terms. The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced. The term “including” is not limiting and means “including without limitation.”

(d) Performance; Time. Whenever any performance obligation hereunder is stated to be due or required to be satisfied on a day other than a Business Day, such performance may be made or satisfied on the next succeeding Business Day. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”, and the word “through” means “to and including.” If any provision of this Agreement refers to any action taken or to be taken by any Person, or which such Person is prohibited from taking, such provision will be interpreted to encompass any and all means, direct or indirect, of taking, or not taking, such action.

(e) Contracts. Unless otherwise expressly provided herein, references to agreements and other contractual instruments, including this Agreement and the other Loan Documents, will be deemed to include all subsequent amendments thereto, restatements thereof and other modifications and supplements thereto which are in effect from time to time, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document.

(f) Laws. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation.

(g) Dollars and \$. All references to “dollars” or “\$” refer to United States dollars.

Section 1.3. Accounting Principles.

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein will be construed, and all financial computations required under this Agreement will be made, in accordance with GAAP, consistently applied.

(b) References herein to “fiscal year”, “fiscal quarter” and “fiscal month” refer to such fiscal periods of Borrower.

(c) If any change in GAAP results in a change in the calculation of the financial covenants or interpretation of related provisions of this Agreement or any other Loan Document, then Borrower and Lender agree to amend such provisions of this Agreement so as to equitably reflect such changes in GAAP with the desired result that the criteria for evaluating Borrower’s financial condition will be the same after such change in GAAP as if such change had not been made.

SECTION 2. THE REVOLVING LINE OF CREDIT.

Section 2.1. Revolving Credit. Subject to the terms and conditions of this Agreement, Lender agrees to make a revolving credit facility (the “*Revolving Credit*”) available to Borrower for the purpose of (a) reimbursing Lender for fees and expenses as provided in Section 5, (b) funding the Debt Service Reserve Account as may be required to maintain the Minimum DSRA Balance (including the initial \$500,000.00 deposit), (c) providing working capital before and after Phase 1 Commencement (each a “*Working Capital Advance*”), and (d) supporting the issuance of Letters of Credit (each a “*Letter of Credit Advance*”) in accordance with Section 4, such Revolving Credit to be in an aggregate principal amount not to exceed, at any one time, the Revolving Credit Commitment. The Revolving Credit will be disbursed in one or more advances (each an “*Advance*”), provided that the conditions precedent to Advances specified in Section 9 are satisfied. Subject to the Revolving Credit Commitment and the other terms and conditions of this Agreement, Borrower may periodically request Advances; provided, however, that Lender will have no obligation to make Advances on or after the Revolving Credit Termination Date.

Section 2.2. Advances. Advances under this Agreement may be requested in writing by Borrower or any Authorized Representative appointed by Borrower. Borrower agrees that Lender may rely upon any written notice given by any person Lender in good faith believes is an Authorized Representative without the necessity of independent investigation.

Section 2.3. Promissory Note. The Revolving Credit will be evidenced by a Revolving Credit Promissory Note (as amended from time to time, the “*Promissory Note*”) made, executed and delivered by Borrower and payable to the order of Lender in the form (with appropriate insertions) attached hereto as **Exhibit B**. For each Letter of Credit requested by Borrower and issued in accordance with Section 4, Borrower will execute and deliver to Lender a promissory note in the form (with appropriate insertions) attached hereto as **Exhibit C** (a “*Letter of Credit Note*”) in the stated principal amount equal to the face amount of such Letter of Credit. Each Letter of Credit Note will be deemed an Advance in the full stated principal amount thereof for purposes of determining the Revolving Credit Commitment. However, each Letter of Credit Note will evidence Borrower’s obligation to repay the lesser of the stated principal amount thereof or the unreimbursed amount (the “*Unreimbursed Amount*”) of any drawing actually paid by Lender to a beneficiary under a Letter of Credit, in accordance with Section 4.3. All references to “Advances” in Sections 2.4, 3.1, and 3.2 shall, with respect to a Letter of Credit Advance, refer solely to the outstanding Unreimbursed Amount(s) evidenced by the corresponding Letter of Credit Note.

Section 2.4. Repayment. All Advances (including all outstanding principal and accrued but unpaid interest) under the Revolving Credit shall be due and payable in full on the Revolving Credit Termination Date. Until the Revolving Credit Termination Date, Borrower shall repay the Advances with interest as provided herein and in the Promissory Note. This is a revolving credit and any Advances repaid may be re-borrowed prior to the Revolving Credit Termination Date. Notwithstanding the foregoing, Borrower may exercise a one-time option to convert the outstanding Advances under the Revolving Credit to a fully amortizing term loan (the “*Term Loan*”) in accordance with Section 6.

SECTION 3. INTEREST, LATE FEES, PREPAYMENTS AND APPLICATIONS.

Section 3.1. Interest Payments.

(a) Advances. The outstanding principal balance of Advances will bear interest (which Borrower hereby promises to pay at the rates and at the times set forth therein) prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full, as provided herein and in the Promissory Note. The determination of the Applicable Rate by Lender shall be conclusive and binding on Borrower in the absence of demonstrable error.

(b) Interest Payment Dates. Borrower will pay regular monthly payments of all accrued but unpaid interest on the Advances as of each Payment Date. Interest on the Advances

will be payable monthly in arrears on each Payment Date. Borrower will make all payments at the address specified in Section 3.4.

(c) Late Fees. If Borrower fails to make any payment of principal or interest under the Notes or any other sum payable hereunder or under any other Loan Document within five (5) calendar days after its due date, Lender will be entitled at its option to impose a late charge in an amount equal to six percent (6.00%) of the amount of such past due payment, which charge, if imposed by Lender, shall be due and payable by Borrower immediately upon receipt of written notice thereof.

Section 3.2. Computation of Interest; Minimum and Maximum Interest Rates. All interest on the Advances will be calculated on the basis of a year of 360 days for the actual number of days elapsed. In no event shall the applicable interest rate exceed the maximum rate allowed by law (including Government Code Section 53854).

Section 3.3. Prepayments.

(a) Voluntary Prepayment. Borrower may voluntarily prepay Advances, in whole or in part, at any time without any penalty or fee. In connection with such prepayment, Borrower may prepay the principal amount of any Note, in whole or in part, together with interest accrued on the principal amount prepaid, at its option and without premium, prior to the applicable Maturity Date or the Revolving Credit Termination Date, as the case may be.

(b) Mandatory Prepayment. If for any reason at any time the aggregate total outstanding amount of Advances exceeds the Revolving Credit Commitment, then Borrower shall, without notice, prepay Advances (together with all accrued but unpaid interest thereon) in an aggregate amount equal to such excess.

(c) Application of Prepayments. All prepayments shall be applied in accordance with Section 3.4.

Section 3.4. Place and Application of Payments and Collections. All payments of principal, interest, fees and all other Obligations payable hereunder will be made to Lender at the following address no later than 2:00 p.m. (Pacific Standard Time) on the date any such payment is due and payable:

River City Bank
Loan Center
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833

So long as any Event of Default has occurred and is continuing, Borrower agrees that Lender, in its sole and absolute discretion, may apply any payments or collections received by Lender from Borrower in respect of the Revolving Credit to any of the Obligations in any manner or order as Lender desires. Lender's receipt and application of payments or collections shall not constitute a waiver or cure of any Default.

Section 3.5. Notations. All Advances made and evidenced by a Note and the rates of interest applicable thereto will be recorded by Lender on its books and records or, at its option in any instance, endorsed on a schedule to such Note, and the unpaid principal balance and interest rates so recorded or endorsed by Lender will be *prima facie* evidence in any court or other proceeding brought to enforce such Note of the principal amount remaining unpaid, the status of the Advances evidenced by such Note and the applicable interest rates; provided, however, that the failure of Lender to record any of the foregoing will not limit or otherwise affect the obligation of Borrower to repay the principal amount of such Note together with accrued interest thereon. Prior to any negotiation of any Note, Lender will record on a schedule thereto the status of all amounts evidenced by such Note and the rates of interest applicable thereto.

SECTION 4. LETTERS OF CREDIT.

Section 4.1. Letter of Credit Commitment.

(a) Subject to the terms and conditions of this Agreement, Lender agrees, in reliance upon the agreements of Borrower, (1) to issue Letters of Credit in Dollars for the account of Borrower, and (2) to honor drawings under the Letters of Credit; provided that after giving effect to any Letter of Credit Advance, the aggregate principal amount of all Advances shall not exceed the Revolving Credit Commitment. Each request by Borrower for the issuance of a Letter of Credit shall be deemed to be a representation by Borrower that the Letter of Credit Advance so requested complies with the conditions set forth in the proviso to the preceding sentence and the other terms and conditions of this Agreement.

(b) Lender shall have no obligation to issue any Letter of Credit if:

(i) The initial expiry date of the requested Letter of Credit is more than one year after the date of issuance;

(ii) The initial expiry date of the requested Letter of Credit would occur more than one year after the Revolving Credit Termination Date;

(iii) The expiry date of the requested Letter of Credit, after giving effect to any auto-renewal feature, would occur more than seven (7) years after the date of issuance; provided, however, that this condition shall not apply (1) if the Letter of Credit is secured by Cash Collateral, or (2) Lender's Chief Executive Officer or Chief Credit Officer approves a waiver of this condition in writing;

(iv) The requested Letter of Credit requires Lender to provide a notice of non-renewal, if any, earlier than sixty (60) days before the expiration of the Letter of Credit;

(v) The requested Letter of Credit contains terms and conditions required by the beneficiary that are deemed unacceptable to Lender;

(vi) Any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin Lender from issuing such Letter of Credit, or any law

applicable to Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Lender shall prohibit, or request that Lender refrain from, the issuance of letters of credit generally, or such Letter of Credit in particular or shall impose upon Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which Lender is not otherwise compensated hereunder) not in effect on the date of this Agreement, or shall impose upon Lender any unreimbursed loss, cost or expense which was not applicable as of the date of this Agreement and which Lender in good faith deems material to it;

(vii) The issuance of such Letter of Credit would violate one or more policies of Lender generally applicable to the issuance of letters of credit;

(viii) The Letter of Credit is to be denominated in a currency other than Dollars;

(ix) The Letter of Credit provides for automatic reinstatement or renewal of the stated amount after any drawing thereunder; or

(x) The issuance of the Letter of Credit would cause the aggregate outstanding amount of Advances to exceed the Revolving Credit Commitment at the time of issuance.

Section 4.2. Issuance of Letters of Credit.

(a) Each Letter of Credit shall be issued upon the request of Borrower delivered to Lender in the form of Lender's standard Letter of Credit Application in the form of **Exhibit E** completed to the satisfaction of Lender and signed by an Authorized Representative of Borrower. Such Letter of Credit Application may be sent via electronic image or other electronic format, by US mail, overnight courier, or by any other means acceptable to Lender and must be received by Lender not later than ten (10) Business Days (or such later date as Lender may agree in its sole discretion) before the proposed issuance date. Such Letter of Credit Application shall specify in form and detail satisfactory to Lender: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in the case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (vii) the purpose and nature of the requested Letter of Credit, which shall be to pay for power purchases or to provide collateral security for power purchases; and (viii) such other matters as Lender may require. Additionally, Borrower will furnish to Lender such other documents and information pertaining to such requested Letter of Credit issuance as Lender may request.

(b) Subject to the terms and conditions hereof, Lender shall, on the requested date, issue a Letter of Credit for the account of Borrower in such form as may be approved from time to time by Lender and in accordance with Lender's usual and customary business practices.

(c) Promptly after its delivery of any Letter of Credit to the beneficiary thereof, Lender will also deliver to Borrower a true and complete copy of such Letter of Credit.

Section 4.3. Drawings and Reimbursements of Letters of Credit. Upon the presentment of any notice of drawing under any Letter of Credit by the beneficiary thereof which Lender

determines to be in compliance with the conditions for payment thereunder, Lender will notify Borrower of the intended date of honor of such drawing. Not later than 5:00 p.m. (Pacific Standard Time) on the date (the "*Reimbursement Date*") that is three (3) Business Days after any payment by Lender under a Letter of Credit (each such date, an "*Honor Date*"), Borrower shall reimburse Lender by making payment to Lender in an amount equal to the amount of such payment. Borrower's failure to so reimburse Lender on or before the Reimbursement Date shall constitute an Event of Default under this Agreement.

Section 4.4. Unexpired Letters of Credit. Borrower agrees that, if any Letter of Credit has been issued by Lender or its correspondent and remains unexpired on the Revolving Credit Termination Date, then Borrower shall immediately provide Cash Collateral to Lender with a value of not less than 110% of the aggregate principal amount of all Letter of Credit Advances with respect to unexpired Letters of Credit.

Section 4.5. Obligations Absolute.

(a) The obligation of Borrower to reimburse Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement or any other Loan Document;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that Borrower may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
- (iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
- (iv) any waiver by Lender of any requirement that exists for Lender's protection and not the protection of Borrower or any waiver by Lender that does not in fact materially prejudice Borrower;
- (v) any honor of a demand for payment presented electronically, even if such Letter of Credit requires that demand be in the form of a draft;
- (vi) any payment made by Lender in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC,

the International Standby Practices (“*ISP*”) or the Uniform Customs and Practice for Documentary Credits (“*UCP*”), as applicable;

(vii) any payment by Lender under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, any party to the Loan Documents.

(b) Borrower shall promptly examine a copy of each Letter of Credit that is delivered to it, and, in the event of any claim of noncompliance with Borrower’s instructions or other irregularity, Borrower will immediately notify Lender of such claim in writing. Borrower shall be conclusively deemed to have waived any such claim it would have against Lender and its correspondents unless such notice is given.

Section 4.6. Role of Lender as L/C Issuer. Borrower agrees that, in paying any drawing under a Letter of Credit, Lender or its correspondent shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by such Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering such document. None of Lender, any of its Related Parties nor any correspondent, participant or assignee of Lender shall be liable to Borrower for (i) any action taken or omitted in connection herewith at the request of Borrower; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit. Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, however, that this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. Neither Lender, nor any correspondent, participant or assignee of Lender shall be liable or responsible for any of the matters described in Section 4.2; provided, however, that anything in such clauses to the contrary notwithstanding, Borrower may have a claim against the Lender to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by Lender’s willful misconduct or gross negligence or Lender’s willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) complying with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and Lender shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial

Telecommunications (“SWIFT”) message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

Section 4.7. Applicability of ISP, Limitation of Liability. Unless otherwise expressly agreed by Lender and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit. Notwithstanding the foregoing, Lender shall not be responsible to Borrower for, and Lender’s rights and remedies against Borrower shall not be impaired by, any action or inaction of Lender required or permitted under any law, order or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the law of any jurisdiction where Lender or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade – International Finance Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

Section 4.8. Letter of Credit Fees. Borrower shall pay to Lender (i) fees upon the issuance of each Letter of Credit in an amount equal to the greater of two percent (2.00%) per annum of the face amount thereof over the anticipated expiration period the (“*Issuance Fee*”) or Four Hundred and 00/100 Dollars (\$400.00) (the “*Flat Fee*”), (ii) a documentation fee in connection with the issuance or amendment of any Letter of Credit in an amount equal to Two Hundred Fifty and 00/100 Dollars (\$250.00), and (iii) reasonable and customary fees upon the occurrence of any other activity with respect to any Letter of Credit (including without limitation, the transfer or cancellation of any Letter of Credit). The fee for any increase to a Letter of Credit shall be an amount equal to the greater of the Issuance Fee (based on the amount of the increase and remaining period) or the Flat Fee. Borrower shall pay to Lender market prices as reasonably determined by Lender for Letters of Credit issued by Lender’s correspondent banks. All Letter of Credit Fees will be due and payable in full upon request by Lender. Borrower acknowledges and agrees that (i) the fees listed above are Lender’s current fees, (ii) Lender may change such fees from time to time without notice to Borrower and (iii) Borrower will pay such fees as changed by Lender from time to time.

Section 4.9. Billing and Payment of the Issuance Fee. The Issuance Fee will be calculated by Lender and be due and payable by Borrower upon issuance of each Letter of Credit. Lender will calculate the Issuance Fee by taking the outstanding face amount of the Letter of Credit, multiplying by an amount determined by Lender (currently .02), and dividing by 360 to arrive at a daily per diem. The daily per diem will be multiplied by the number of days in the anticipated expiration period to arrive at the Issuance Fee.

SECTION 5. FEES.

Section 5.1. Upon execution of this Agreement, Borrower shall pay to Lender fees for this Agreement as follows:

(a) Loan Fee. A loan fee in an amount equal to 0.25% of the initial Revolving Credit Commitment (\$12,500.00). Additionally, Borrower shall pay to Lender a loan fee in connection

with the Phase 1 Step-Up and Phase 2 Step-Up in an amount equal to 0.25% of each incremental increase (\$50,000.00 and \$25,000.00, respectively).

(b) Documentation Fee. A documentation fee in the amount of \$5,000.00.

(c) Legal Fees. Lender's legal fees incurred in connection with this Agreement in an amount not to exceed \$10,000.00.

(d) Other Costs and Fees. Borrower shall be subject to and agrees to pay any and all other reasonable out-of-pocket fees and expenses incurred by Lender associated with the underwriting, documentation and administration of this Agreement, including the cost of the third-party review of Borrower's pro forma financial projections, Secretary of State and UCC fees, as set forth on the Invoice delivered to Borrower pursuant to this Agreement.

SECTION 6. CONVERSION OF REVOLVING CREDIT ADVANCES TO TERM NOTE.

Section 6.1. Term Loan. Provided no Default or Event of Default has occurred or is continuing, Borrower may exercise a one-time option to convert all outstanding Advances under the Revolving Credit to a Term Loan as follows: No earlier than March 15, 2022 or later than April 15, 2022, Borrower must notify Lender in writing of its intent to convert outstanding Advances to a Term Loan and specify the desired conversion date, which must be not earlier than five (5) business days after the notice date or later than April 30, 2022. The Term Loan will be payable over a term of up to sixty (60) months, with equal fully amortizing monthly principal payments plus interest payable monthly in arrears at the Applicable Rate as determined by Lender as of the date of conversion specified in Borrower's written notice. The Term Loan shall be governed by the terms and conditions of this Agreement and evidenced by a promissory note (the "*Term Note*") made, executed and delivered by Borrower in the form (with appropriate insertions) attached hereto as **Exhibit D**. Upon conversion, (a) the Revolving Credit Commitment shall immediately terminate and Lender shall have no further obligation to make Advances under this Agreement, and (b) the Debt Service Coverage Ratio covenant set forth in Section 10.5 will apply.

SECTION 7. COLLATERAL – REVOLVING CREDIT COMMITMENT.

Section 7.1. Debt Service Reserve Account and Cash Collateral Account. As a condition to Lender's obligation to make any Advances under the Revolving Credit Commitment, Borrower will open and establish with Lender (a) a non-interest bearing deposit account (the "*Debt Service Reserve Account*"), with a balance of not less than Minimum DSRA Balance at all times, and (b) an interest-bearing restricted deposit account with a minimum balance of \$5,000,000.00 (the "*Cash Collateral Account*"). The Debt Service Reserve Account and the Cash Collateral Account will be held in the name of Borrower, and Borrower will pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of the Debt Service Reserve Account and the Cash Collateral Account. Subject to the conditions of this Agreement, Borrower may deposit the proceeds of Advances in the Debt Service Reserve Account to fund the Minimum DSRA Balance.

Section 7.2. Pledge and Security. As security for the prompt payment and performance by Borrower of all Obligations, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, transfers, delivers, and confirms unto Lender, and hereby grants to Lender a continuing security interest in all Accounts, Revenues, Resource Adequacy Contracts, the Debt Service Reserve Account and the Cash Collateral Account, and (i) all replacements, substitutions or proceeds of the foregoing, (ii) all instruments and documents now or hereafter evidencing the of the foregoing, (iii) all powers, options, rights, privileges and immunities relating to the foregoing, and (iv) all interest, income, profits and proceeds of the foregoing. If an Event of Default shall occur hereunder or under any of the Obligations, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds then remaining in the Debt Service Reserve Account or the Cash Collateral Account and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery, and all reasonable attorneys' fees, costs and expenses incurred by Lender in connection with the Event of Default, to any amounts due and unpaid under this Agreement, any Note or any other Obligations in such manner and order as Lender shall deem appropriate in its sole discretion, (B) exercise any and all rights and remedies of a secured party under the Uniform Commercial Code or other applicable law, and/or (C) exercise any other remedies available at law or in equity. All rights and remedies of Lender hereunder and under that certain Assignment of Deposit Accounts in the form of **Exhibit F** attached between Borrower and Lender shall be cumulative.

Section 7.2. Restrictions on Debt Service Reserve Account. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Debt Service Reserve Account, and Borrower shall have no right to withdraw funds from the Debt Service Reserve Account; provided, however, that provided no Default or Event of Default has occurred and is continuing, Borrower may withdraw funds from the Debt Service Reserve Account from time to time if the balance of the Debt Service Reserve Account will not be less than the Minimum DSRA Balance after giving effect to such withdrawal.

Section 7.3. Restrictions on Cash Collateral Account. Borrower hereby acknowledges and agrees that Lender shall have exclusive control over the Cash Collateral Account, and Borrower shall have no right to withdraw funds from the Cash Collateral Account; provided, however, that provided no Default or Event of Default has occurred and is continuing: (1) upon the occurrence of Phase 1 Commencement, Lender will permit withdrawals from the Cash Collateral Account from time to time if the balance of the Cash Collateral Account will not be less than \$5,000,000.00 after giving effect to such withdrawal, and (2) Lender will release all restrictions on withdrawals from the Cash Collateral Account upon the occurrence of the following release conditions: (i) Phase 2 Commencement has occurred, (ii) Phase 3 Commencement occurs by no later than January 31, 2022, (iii) the actual opt-out rate for Borrower's customers is no greater than 125% of the opt-out rate projected in the Pro Forma, and (iv) Borrower satisfies the Profitability Requirement. Borrower acknowledges and agrees that Lender has consented to release the Cash Collateral Account on the conditions set forth in this Section 7.3 in reliance upon the data, assumptions and projections contained in the pro forma financial models previously presented to Lender by Borrower and are subject to modification or the imposition of new conditions by Lender if (x) the Pro Forma contains materially different data, assumptions or projections and (y) such variance could reasonably be expected to adversely affect the financial condition, performance, business or operations of Borrower. Lender will give written notice to Borrower of any proposed modifications to the release conditions set forth

herein. If requested, Lender will meet and confer in good faith with Borrower regarding the proposed modifications; provided, however, that Lender will have the right to issue final modifications in its reasonable discretion not less than twenty-one (21) days from the date of Lender's notice and such final modifications will become effective immediately upon Borrower's receipt without the necessity of a formal amendment to this Agreement signed by Borrower.

Section 7.4. General Obligation. Notwithstanding any other provision of this Agreement or any other Loan Document to the contrary, Borrower hereby acknowledges and agrees that payment of all Obligations (including, without limiting the foregoing, payments of principal of and interest on each Advance) is a general obligation of Borrower secured by a first priority lien on the collateral described in this Agreement. Lender acknowledges that the Obligations of Borrower hereunder are solely obligations of Borrower and are not debts, liabilities or obligations of any of the JPA Members and no taxing power of any of the foregoing is pledged therefore. Borrower has no taxing powers.

Section 7.5. Lockbox Account. Notwithstanding the terms of this Section 7, Lender acknowledges and agrees that Borrower intends to establish a lockbox account with Lender ("Lockbox") in which Revenues from the sale of electricity to Borrower's customers will be deposited to make priority payments due to (i) power providers for energy sold to Borrower; (ii) the CAL ISO for charges related to the distribution of energy; and (iii) Lender, as collateral agent for the power providers, for performance of its duties; and from which excess Revenues after payment of amounts due to the foregoing shall be deposited in the operating account of Borrower, where it will be available for the payment of the Obligations. The Lockbox is a mechanism to provide security to power providers in lieu of providing letters of credit and other credit support. The payment of the power providers and the CAISO from the Revenues deposited in the Lockbox will have priority over payments due to Lender with respect to the Obligations. The terms of the agreements governing the Lockbox will be consistent with terms customarily used for community choice aggregation lockbox arrangements in which Lender currently serves as the collateral agent and will be subject to the approval of Lender.

SECTION 8. REPRESENTATIONS AND WARRANTIES.

Borrower represents and warrants to Lender as follows:

Section 8.1. Organization and Qualification; Authority; Consents. Borrower (a) is a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Borrower has the agency power to enter into this Agreement and the other Loan Documents to which it is a party, to request the Advances and incur the Obligations provided for herein, to execute the Notes in evidence thereof, to pledge and encumber assets as

security therefor, and to perform each and all of the promises herein and therein. This Agreement and the other Loan Documents to which Borrower is a party do not, nor does the performance or observance by Borrower of any of the matters or things herein or therein provided for, contravene any provision of law or the Joint Powers Agreement or any covenant, indenture or agreement of or affecting Borrower or any of its Properties, including any power purchase agreements. The execution, delivery, performance and observance by Borrower of this Agreement and the other Loan Documents do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

Section 8.2. Legal Effect. This Agreement and the other Loan Documents to which Borrower is a party constitute legal, valid and binding agreements of Borrower, enforceable in accordance with their respective terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

Section 8.3. Subsidiaries. Borrower has no Subsidiaries.

Section 8.4. Use of Proceeds. Borrower will use the proceeds of the Advances as provided herein and solely for purposes consistent with the purpose of Borrower as set forth in the Joint Powers Agreement, including for purposes consistent with the community choice aggregation program established by Borrower pursuant to California Public Utilities Code Section 366.2.

Section 8.5. Financial Reports. Effective with the delivery to Lender of the financial statements required by Section 10.2, the statements of financial condition of Borrower as at the date of such statements delivered to Lender, and the related statements of income, retained earnings and cash flows of Borrower for the fiscal year then ended and accompanying notes thereto, which financial statements are to be reviewed by an independent public accountant, and the unaudited interim statements of financial condition of Borrower as at the date of such statements delivered to Lender and the related statements of income and cash flows of Borrower for the period then ended, fairly present the financial condition of Borrower as at said dates and the results of its operations and cash flows for the periods then ended in conformity with GAAP applied on a consistent basis, subject (in the case of unaudited statements) year-end audit adjustments. Borrower has no contingent liabilities which are material to it other than, with respect to any financial statements delivered to Lender, as indicated on said financial statements.

Section 8.6. Full Disclosure. The statements and other information furnished to Lender in connection with the negotiation of this Agreement and the other Loan Documents and the commitment by Lender to provide the financing contemplated hereby do not contain any untrue statements of a material fact or omit a material fact necessary to make the material statements contained herein or therein not misleading; provided that Lender acknowledges that, as to any projections furnished to Lender, Borrower only represents that the same were prepared on the basis of information and estimates Borrower believed to be reasonable at the time such information was prepared.

Section 8.7. Litigation. There is no litigation or governmental proceeding pending, nor to the knowledge of Borrower threatened in writing, against Borrower which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Borrower.

Section 8.8. Good Title. Borrower has good and defensible title to its Properties as reflected on the most recent balance sheet of Borrower furnished to Lender, subject to no Liens other than Permitted Liens or as otherwise limited by applicable law.

Section 8.9. Members. Borrower is not a party to any contract or agreement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 8.10. Compliance with Laws. Borrower is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower. Borrower has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action could have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 8.11. Other Agreements. Borrower is not in default under the terms of any covenant, indenture or agreement of or affecting Borrower or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Borrower.

Section 8.12. No Default. No Default or Event of Default has occurred or is continuing.

Section 8.13. Sovereign Immunity. Borrower is not entitled to immunity from legal proceedings to enforce this Agreement or any other Loan Document to which Borrower is a party (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with this Agreement or any other Loan Document to which Borrower is a party.

Section 8.14. Anti-Terrorism Laws. Borrower is not in violation of any law relating to terrorism or money laundering, including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 and the Patriot Act.

SECTION 9. CONDITIONS PRECEDENT.

Section 9.1. All Advances. The obligation of Lender to make any Advance (including the initial Advance unless otherwise specified) is subject to the satisfaction of the following conditions precedent:

(a) each of the representations and warranties set forth in Section 8 hereof and in the other Loan Documents shall be true and correct as of said time, except that the representations and warranties made under Section 8.5 (except for the initial Advance) shall be deemed to refer to the most recent financial statements furnished to Lender pursuant to Section 10.2 hereof; and

(b) Borrower shall be in full compliance with all of the material terms and conditions of this Agreement, the Notes, the Assignment of Deposit Account and all other Loan Documents, and no Default or Event of Default shall have occurred or be continuing.

(c) Lender shall have received properly completed and executed originals of the following in form and substance satisfactory to Lender:

- (i) this Agreement;
- (ii) a favorable written legal opinion from Borrower's counsel as to the formation, existence and good standing of Borrower; the power and authority of Borrower to enter into this Agreement and perform its Obligations hereunder; and the due execution, validity and enforceability of this Agreement and the other Loan Documents;
- (iii) a completed and signed Request for Advance in the form of **Exhibit G** with supporting documentation;
- (iv) the resolutions adopted by the Board of Directors of Borrower with respect to this Agreement and the other Loan Documents, certified by an Authorized Representative;
- (v) an incumbency certificate containing the name, title and genuine signatures of each of Borrower's Authorized Representatives;
- (vi) evidence of Borrower's good standing in the state of California;
- (vii) payment by Borrower of the Loan Fee and all other amounts required to be paid by Borrower pursuant to Sections 5.1 and 12.4(a) of this Agreement;
- (viii) copies (executed and certified, as may be appropriate) of the organizational documents of Borrower and all legal documents or proceedings (including minutes of board meetings) taken in connection with the execution and delivery of this Agreement to the extent Lender or its counsel may reasonably request;

- (ix) customer verification information for officers of Borrower and signers of the Loan Documents as Lender may require;
 - (x) an executed Subordination Agreement from Emerald Blue LLC in form and substance satisfactory to Lender; and
 - (xi) evidence of Liability Insurance in form and substance satisfactory to Lender.
- (d) in the case of a Letter of Credit Advance, the request is made in accordance with Section 4;
- (e) the Debt Service Reserve Account shall be funded with a balance of not less than the Minimum DSRA Balance (which condition may be satisfied by depositing the proceeds of Advances);
- (f) the Cash Collateral Account shall be funded with a balance of \$5,000,000.00 unless and until withdrawals are permitted pursuant to Section 7.3; and
- (g) any legal matters incident to the execution and delivery of this Agreement and the other Loan Documents and to the transactions contemplated hereby and thereby shall be reasonably satisfactory to Lender and its counsel.

Section 9.2. Step-Up Conditions. The obligation of Lender to increase the Revolving Credit Commitment is subject to the satisfaction of following conditions precedent:

- (a) All of the conditions precedent set forth in Section 9.1(a), (b), (e), (f) and (g) shall have been and shall continue to be satisfied;
- (b) For the Phase 1 Step-Up:
 - (i) Lender shall have timely received and accepted the Pro Forma;
 - (ii) Lender shall have received an executed Subordination Agreement from the City of San Diego substantially in form and substance satisfactory to Lender;
 - (iii) Thirty (30) days prior to the anticipated date of Phase 1 Commencement, Borrower shall have provided evidence in form and substance satisfactory to Lender, in Lender's sole discretion, that Phase 1 Commencement is reasonably certain to occur in accordance with the Pro Forma by no later than March 31, 2021; and
 - (iv) Lender shall have received payment of the loan fee described in Section 5.1(a) and all other fees, costs and expenses required to be paid by Borrower under this Agreement and the other Loan Documents.

- (c) For the Phase 2 Step-Up:
- (i) Phase 1 Commencement shall have successfully occurred in accordance with the Pro Forma by no later than March 31, 2021, as evidenced by enrollment reports and independently-verified data satisfactory to Lender in its sole discretion;
 - (ii) Thirty (30) days prior to the anticipated date of Phase 2 Commencement,, Borrower shall have provided evidence in form and substance satisfactory to Lender, in Lender's sole discretion, that Phase 2 Commencement is reasonably certain to occur in accordance with the Pro Forma by no later than June 30, 2021; and
 - (iii) Lender shall have received payment of the loan fee described in Section 5.1(a) and all other fees, costs and expenses required to be paid by Borrower under this Agreement and the other Loan Documents.

SECTION 10. COVENANTS.

Borrower covenants and agrees as follows:

Section 10.1. Maintenance of Business. Borrower shall preserve and maintain its existence. Borrower shall preserve and keep in force and effect all licenses, permits and franchises necessary to the proper conduct of its business and shall conduct its business affairs in a reasonable and prudent manner. Borrower shall maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel, and shall provide Lender with written notice of any change in executive and management personnel.

Section 10.2. Financial Reports. Borrower shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives such information respecting the business and financial condition of Borrower as Lender may reasonably request; and without any request, Borrower shall furnish to Lender:

(a) as soon as available, and in any event within forty-five (45) days after the close of each month, an unaudited balance sheet of Borrower as of the last day of the period then ended and statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(b) as soon as available, and in any event no later than one hundred eighty (180) days after each Fiscal Year End, a CPA-audited balance sheet of Borrower as of the last day of the Fiscal Year End and CPA-audited statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection

with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other review procedures as were considered necessary in the circumstances;

(c) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(d) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely affect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder; and

(e) promptly upon request, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to this Section 10.2 shall be accompanied by a written certificate signed by the Director of Finance of Borrower to the effect that to the best of such officer's knowledge and belief no Default or Event of Default has occurred during the period covered by such statements or, if any such Default or Event of Default has occurred during such period, setting forth a description of such Default or Event of Default and specifying the action, if any, taken by Borrower to remedy the same.

Section 10.3. Maintenance of Debt Service Reserve Account. Borrower shall ensure that the Debt Service Reserve Account, the Cash Collateral Account and the Revenues remain pledged and assigned to Lender as collateral for the Obligations in accordance with Section 7.

Section 10.4. Exclusive Deposit Relationship. Borrower shall maintain all of Borrower's deposit accounts exclusively with Lender. If this covenant is not satisfied, as determined by Lender, it will not constitute an Event of Default, but the Applicable Rate on all outstanding Notes will immediately increase by adding an additional **2.00** percentage point margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter so long as this covenant is not satisfied.

Section 10.5. Debt Service Coverage Ratio. If Borrower elects to convert the Advances to the Term Loan, Borrower shall thereafter maintain a minimum Debt Service Coverage Ratio ("*DSCR*") not at any time less than **1.25**, measured annually as of each Fiscal Year End.

"*DSCR*" means Annual EBIDA divided by Debt Service.

"*Annual EBIDA*" means the change in Net Position plus depreciation, amortization and interest expense, for the twelve (12) month period ending the most recent Fiscal Year End.

"*Debt Service*" means interest expense during the calculated period plus scheduled principal payments during the calculated period.

“*Net Position*” means total assets less total liabilities.

Section 10.6. Minimum Cumulative EBIDA. Borrower will maintain a minimum Quarterly EBIDA on a quarterly basis as follows:

“*Cumulative EBIDA*” means the change in Net Position plus depreciation, amortization and interest expense, for the following three, six, nine and twelve-month periods.

Reporting Period	Minimum Cumulative EBIDA
01/01/2021 – 03/31/2021	(\$14,900,000)
01/01/2021 – 06/30/2021	(\$16,900,000)
01/01/2021 – 09/30/2021	\$2,600,000
01/01/2021 – 12/31/2021	\$10,600,000
01/01/2022 – 03/31/2022	(\$11,200,000)
01/01/2022 – 06/30/2022	\$5,800,000
01/01/2022 – 09/30/2022	\$20,800,000
01/01/2022 – 12/31/2022	\$23,500,000

Section 10.7. Tangible Adjusted Unrestricted Net Position. Commencing on December 31, 2021, Borrower shall be subject to a minimum Tangible Adjusted Unrestricted Net Position requirement in an amount and for a period to be mutually agreed between Lender and Borrower in reasonable relation to the Pro Forma.

“*Tangible Adjusted Unrestricted Net Position*” means total Adjusted Unrestricted Net Position less any intangible assets.

“*Adjusted Unrestricted Net Position*” means Net Position, less temporarily and permanently restricted net assets as presented in Borrower’s financial statements, plus the Debt Service Reserve Account.

Section 10.8. Customer Phasing Requirements. Borrower will satisfy the following customer phasing requirements:

- (a) Phase 1 Commencement must occur by no later than March 31, 2021.
- (b) Phase 2 Commencement must occur by no later than June 30, 2021.
- (c) Phase 3 Commencement must occur by no later than January 31, 2022.

Borrower shall not make any material change to its customer enrollment phases, schedule or program without the prior written consent of Lender, which may be granted or withheld in Lender’s sole and absolute discretion. Borrower shall submit any request to modify the foregoing requirements in writing to Lender no later than thirty (30) days before the specified deadline. Such

request shall be accompanied by an analysis of any material changes to the Pro Forma resulting from the proposed changes to the phasing schedule.

Section 10.9. Inspection. Borrower shall permit Lender and its duly authorized representatives and agents, at such times and intervals as Lender may designate, but in any event no more than six (6) times during any twelve (12) month period if no Default or Event of Default has occurred and is continuing: (i) to visit and inspect any of the Properties, books and financial records of Borrower and to examine and make copies of the books of accounts and other financial records of Borrower, and (ii) to discuss the affairs, finances and accounts of Borrower with, and to be advised as to the same by, the executive officers of Borrower and other officers, employees and independent public accountants of Borrower (and by this provision Borrower authorizes such accountants to discuss with Lender or its agents and representatives the finances and affairs of Borrower). Without limiting the generality of the foregoing, Borrower shall promptly provide all information and access requested by Lender as Lender determines is necessary or required in connection with the preparation of its own financial statements.

Section 10.10. Liens. Borrower shall not create, incur or permit to exist any Lien of any kind on any Property owned by Borrower; provided, however, that the foregoing shall not apply to nor operate to prevent:

(a) Liens arising by statute in connection with worker's compensation, unemployment insurance, old age benefits, social security obligations, taxes, assessments, statutory obligations or other similar charges, good faith cash deposits in connection with tenders, contracts or leases to which Borrower is a party or other cash deposits required to be made in the ordinary course of business, provided in each case that the obligation is not Indebtedness for Borrowed Money and that the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest and adequate reserves have been established therefor;

(b) mechanics', workmen's, materialmen's, landlords', carriers', or other similar Liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings which prevent enforcement of the matter under contest;

(c) the pledge of assets for the purpose of securing an appeal, stay or discharge in the course of any legal proceeding, provided that the aggregate amount of liabilities of Borrower secured by a pledge of assets permitted under this subsection, including interest and penalties thereon, if any, shall not be in excess of \$200,000 at any one time outstanding;

(d) the Liens identified on **Schedule 1** hereto;

(f) the Liens established by the Loan Documents or otherwise in favor of Lender; and

(g) the Liens arising in connection with the Lockbox.

The Liens described in clauses (a) through (f) of this Section 10.10 are collectively referred to in this Agreement as the “*Permitted Liens*.”

Section 10.11. Investments, Acquisitions, Loans, Advances and Guaranties. Borrower shall not directly or indirectly, make, retain or have outstanding any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to, any other Person, or acquire all or any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligation or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other Person.

Section 10.12. Compliance with Laws. Borrower shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower or could result in a Lien upon any of its Property.

Section 10.13. Contracts With Members. Borrower shall not enter into any contract, agreement or business arrangement with any of its members on terms and conditions which are less favorable to Borrower than would be usual and customary in similar contracts, agreements or business arrangements between Persons not affiliated with each other.

Section 10.14. Notices of Claims and Litigation. Borrower shall promptly inform Lender in writing of (a) all material adverse changes in Borrower’s financial condition and/or (b) all existing or written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower which could materially affect the financial condition of Borrower.

Section 10.15. Other Agreements. Borrower shall comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Borrower, and notify Lender immediately in writing of any default in connection with any other such agreements.

Section 10.16. Performance. Borrower shall timely perform and comply with all terms, conditions, and provisions set forth in this Agreement, the Notes and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender promptly in writing of any Default in connection with any Loan Document.

Section 10.17. Compliance Certificates. Borrower shall, unless waived in writing by Lender, provide Lender, at least annually, with a certificate executed by Borrower’s chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and

warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Section 10.18. Fiscal Year. Borrower shall not change its fiscal year without the prior written consent of Lender.

Section 10.19. Indebtedness for Borrowed Money. As of the date hereof, Borrower has no outstanding Indebtedness for Borrowed Money other than loans from the City of San Diego and Blue Emerald LLC, both of which will be subordinate to the Obligations. Without Lender's prior written consent, Borrower shall not issue, incur, assume, create or have outstanding any Indebtedness for Borrowed Money; provided, however, that the foregoing shall not restrict nor operate to prevent the Obligations of Borrower owing to Lender hereunder.

Section 10.20. Resource Adequacy. As soon as available, Borrower will deliver to Lender all material information with respect to any Resource Adequacy Contract entered into by Borrower from and after the date of this Agreement, and will promptly execute and deliver to Lender such documents, instruments, assignments, consents and agreements as Lender may reasonably request for the purpose of creating, perfecting, maintaining and enforcing Lender's security interest therein.

Section 10.21. Pro Forma. Borrower acknowledges and agrees that the covenants set forth in this Section 10 have been agreed in reliance upon the data, assumptions and projections contained in the pro forma financial models previously presented to Lender by Borrower and are subject to modification by Lender if (a) the Pro Forma contains materially different data, assumptions or projections and (b) such variance could reasonably be expected to adversely affect the financial condition, performance, business or operations of Borrower. Any such modification will become effective immediately upon Borrower's receipt of written notice from Lender without the necessity of a formal amendment to this Agreement signed by Borrower.

SECTION 11. EVENTS OF DEFAULT AND REMEDIES.

Section 11.1. Events of Default. Any one or more of the following will constitute an "Event of Default" hereunder:

(a) any default in the payment when due (whether by lapse of time, acceleration or otherwise) of (i) any payment of principal or interest under the Notes, or (ii) any other Obligation within five (5) days after payment or performance is due from Borrower; or

(b) any representation or warranty made by Borrower herein or in any other Loan Document, or in any statement or certificate furnished by it pursuant hereto or thereto, or in connection with any Advance made hereunder, is inaccurate or untrue in any material respect as of the date of the issuance or making thereof; or

(c) any event occurs or condition exists (other than those described in clauses (a) through (b) above) which is specified as an event of default under any of the other Loan Documents, or any of the Loan Documents for any reason ceases to be in full force and effect, or

any of the Loan Documents is declared to be null and void, or Borrower takes any action for the purpose of repudiating or rescinding any Loan Document executed by it; or

(d) any judgment, order, writ of attachment, writ of execution, writ of possession or any similar legal process seeking an amount in excess of One Million Dollars (\$1,000,000) is entered or filed against Borrower or any of Borrower's Properties and remains unvacated, unbonded and unstayed for a period of ten (10) or more calendar days; or

(e) Borrower defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement in favor of any other creditor or Person that may materially affect any of Borrower's Properties, Borrower's ability to repay the Revolving Credit or Borrower's ability to perform its Obligations under this Agreement or any of the other Loan Documents; or

(f) a material adverse change occurs in Borrower's operations or financial condition, Lender believes, in its reasonable discretion, the prospect of payment or performance of Borrower's obligations under this Agreement is materially impaired, or a new law or regulation is passed (or an existing law or regulation is changed) which has a material adverse effect on Borrower; or

(g) A JPA Member fails to continue to be a member of Borrower; or

(h) Borrower (i) takes any steps to effect a Winding-Up, or (ii) fails to pay, or admits in writing its inability to pay, its debts generally as they become due;

(i) any custodian, receiver, administrative receiver, administrator, trustee, examiner, liquidator or similar official is appointed over Borrower or any substantial part of any of its Properties, whether by court order, by operation of law or otherwise, or a Winding-Up proceeding is instituted against Borrower, and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of thirty (30) or more days, or Borrower becomes unable to pay or admits in writing its inability to pay its debts as they become due; or

(j) Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any other Loan Document or in any other agreement between Lender and Borrower, which failure is capable of being cured, if such failure is not cured within thirty (30) days after written notice thereof from Lender; provided however, that if any such failure cannot reasonably be cured within such 30-day period, then the period to cure shall be deemed extended for up to an additional thirty (30) days after Lender's initial default notice as long as Borrower diligently and continuously proceeds to cure such failure. Borrower agrees to reimburse Lender for all reasonable costs and expenses (including legal fees) incurred by Lender as a result of any failure described in this paragraph until cured.

Section 11.2. Non-Insolvency Default Remedies. Upon the occurrence of any Event of Default described in clauses (a) through (h) or (j) of Section 11.1, Lender or any permitted holder of the Notes may, by notice to Borrower, take any of the following actions:

(a) terminate any obligation to extend any further credit hereunder (including but not limited to Advances) on the date (which may be the date thereof) stated in such notice;

(b) declare all Advances and all indebtedness under the Notes then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, to be immediately due and payable without further demand, presentment, protest or notice of any kind; and

(c) exercise and enforce any and all rights and remedies contained in any other Loan Document or otherwise available to Lender at law or in equity.

Section 11.3. Insolvency Default Remedies. Upon the occurrence of any Event of Default described in Section 11.1(h), all Advances and all indebtedness under any Note then outstanding (including all outstanding principal and all accrued but unpaid interest), and all other Obligations of Borrower to Lender, will immediately become due and payable without presentment, demand, protest or notice of any kind, and Lender shall have no obligation to extend any further credit hereunder (including but not limited to Advances).

SECTION 12. MISCELLANEOUS.

Section 12.1. Holidays. If any payment hereunder becomes due and payable on a day which is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day on which date such payment will be due and payable. In the case of any principal falling due on a day which is not a Business Day, interest on such principal amount will continue to accrue during such extension at the Applicable Rate, which accrued amount will be due and payable on the next scheduled date for the payment of interest.

Section 12.2. No Waiver, Cumulative Remedies. No delay or failure on the part of Lender or on the part of the holder of any Note in the exercise of any power or right will operate as a waiver thereof or as an acquiescence in any Default, nor will any single or partial exercise of any power or right preclude any other or further exercise thereof, or the exercise of any other power or right. All rights and remedies of Lender and the holder of any Note are cumulative to, and not exclusive of, any rights or remedies which any of them would otherwise have. Borrower agrees that in the event of any breach or threatened breach by Borrower of any covenant, obligation or other provision contained in this Agreement, Lender shall be entitled (in addition to any other remedy that may be available to Lender) to: (i) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Borrower further agrees that neither Lender nor any other person or entity shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 12, and Borrower irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 12.3. Amendments, Etc. No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document nor consent to any departure by

Borrower therefrom, will in any event be effective unless the same is in writing and signed by Lender. No notice to or demand on Borrower in any case will entitle Borrower to any other or further notice or demand in similar or other circumstances.

Section 12.4. Costs and Expenses.

(a) Borrower shall pay all reasonable out-of-pocket expenses incurred by Lender in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) including, without limitation, the fees specified in Section 5.1.

(b) Borrower agrees to pay on demand all reasonable costs and expenses (including attorneys' fees and expert witness fees), if any, incurred by Lender or any other holder of the Obligations in connection with any Event of Default or the enforcement of this Agreement, any other Loan Document or any other instrument or document to be delivered hereunder, including without limitation any action, suit or proceeding brought against Lender by any Person which arises out of the transactions contemplated hereby or out of any action or inaction by Lender hereunder or thereunder.

Section 12.5. Indemnity. Whether or not the transactions contemplated hereby shall be consummated, Borrower shall, to the extent permitted by law, indemnify, defend and hold harmless Lender and its officers, directors, employees, counsel, agents and attorneys-in-fact (each, an "*Indemnified Person*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, charges, expenses or disbursements (including attorneys' costs and expert witnesses' fees), of any kind or nature whatsoever, that (a) arise from or relate in any way to the execution, delivery, enforcement, performance and administration of this Agreement and any other Loan Document, or the transactions contemplated hereby and thereby, and with respect to any investigation, litigation or proceeding (including any Winding-Up or appellate proceeding) related to this Agreement or the Advances or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto, and/or (b) may be incurred by or asserted against such Indemnified Person in connection with or arising out of any pending or threatened investigation, litigation or proceeding, or any action taken by any Person, arising out of or related to any Property of Borrower (all the foregoing, collectively, the "*Indemnified Liabilities*"); provided that Borrower shall have no obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities to the extent arising from the gross negligence or willful misconduct of such Indemnified Person.

No action taken by legal counsel chosen by Lender in defending against any investigation, litigation or proceeding or requested remedial, removal or response action vitiates or in any way impairs Borrower's obligation and duty hereunder to indemnify and hold harmless Lender unless such action involved gross negligence or willful misconduct. Neither Borrower nor any other Person is entitled to rely on any inspection, observation, or audit by Lender or its representatives or agents. Lender owes no duty of care to protect Borrower or any other Person against, or to inform Borrower or any other Person of, any adverse condition affecting any site or Property. Lender is not obligated to disclose to Borrower or any other Person any report or

findings made as a result of, or in connection with, any inspection, observation or audit by Lender or its representatives or agents.

The obligations of Borrower in this Section 12.5 shall survive the payment and performance of all other Obligations. At the election of any Indemnified Person, Borrower shall defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person in such Indemnified Person's sole discretion, at the sole cost and expense of Borrower. All amounts owing under this Section 12.5 shall be paid within thirty (30) days after demand.

Section 12.6. Right of Set Off. To the extent permitted by applicable law, Lender reserves a right of setoff in all of Borrower's accounts with Lender (whether checking, savings, or some other account) other than any Lockbox Account. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums due and owing from Borrower against any and all such accounts.

Section 12.7. Survival of Representations. All representations and warranties made herein or in certificates given pursuant hereto will survive the execution and delivery of this Agreement and the other Loan Documents, and will continue in full force and effect with respect to the date as of which they were made as long as any credit is in use or available hereunder.

Section 12.8. Notices. Except as otherwise specified herein, all notices hereunder will be in writing (by hand, commercial overnight courier, or e-mail) and will be given to the relevant party at its address or e-mail address set forth below, or such other address as such party may hereafter specify by written notice to the other. Any notice of default under this Agreement will be given by hand or overnight courier in addition to e-mail. Notices hereunder will be addressed:

To Borrower at:

San Diego Community Power
9601 Ridgehaven Court
San Diego, CA 92123
Attention: CEO

To Lender at:

River City Bank
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833
Telephone: (916) 567-2700
Telecopy: (916) 567-2780
Attention: Jennifer Ballard
Loan Center

Each such notice, request or other communication will be effective (i) if given by e-mail, upon transmission, or (ii) if given by any other means, when delivered at the addresses specified in this Section 12.8; *provided that* any notice given pursuant to Section 2.2 hereof will be effective only upon receipt.

For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address.

Section 12.9. Headings. Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

Section 12.10. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.11. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties hereto on separate counterparts, and all such counterparts taken together will be deemed to constitute one and the same instrument.

Section 12.12. Assignments, Binding Nature, Governing Law, Etc. This Agreement will be binding upon Borrower and its permitted successors and assigns, and will inure to the benefit of Lender and the benefit of its permitted successors and assigns, including any permitted subsequent holder of a Note. This Agreement and the rights and duties of the parties hereto will be construed and determined in accordance with the internal laws of the State of California without regard to principles of conflicts of laws. This Agreement constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. Borrower may not assign its rights hereunder without the written consent of Lender. Lender may assign its rights hereunder without the consent of Borrower, but only if after any such assignment Lender acts as the lead agent or administrative agent with respect to this Agreement.

Section 12.13. Submission to Jurisdiction; Waiver of Jury Trial. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Eastern District of California and of any California State court sitting in the County of Sacramento for purposes of all legal proceedings arising out of or relating to this Agreement, the other Loan

Documents or the transactions contemplated hereby or thereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court has been brought in an inconvenient forum. Borrower hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to any Loan Document or in the transactions contemplated thereby.

Section 12.14. Time is of the Essence. Time is of the essence in the performance and enforcement of this Agreement and the other Loan Documents.

Section 12.15. Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Revolving Credit or the Term Loan to one or more purchasers, whether related or unrelated to Lender, provided that at all times Lender manages the Revolving Credit and the Term Loan such that Borrower may communicate exclusively with Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to this Agreement, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interest in the Notes and will have all the rights granted under the participation agreement or agreements governing the same of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligations under this Agreement irrespective of the failure or insolvency of any holder of any interest in the Notes. Borrower further agrees that the purchaser of any such participation interests may enforce the interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Section 12.16. No Recourse Against Constituent Members of Borrower. Borrower 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 the Joint Powers Agreement and is a public entity separate from its constituent members. Borrower shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Notes. Lender shall not make any claims, take any actions or assert any remedies against any of Borrower's constituent members in connection with any payment default by Borrower under this Agreement or any other Loan Document.

[Signatures appear on following page.]

WHEREFORE, Borrower and Lender have entered into this Agreement as of the first date written above.

BORROWER:

SAN DIEGO COMMUNITY POWER

By: _____

Name: Cody Hooven

Its: Interim CEO

LENDER:

RIVER CITY BANK

By: _____

Name: _____

Its: _____

DRAFT

EXHIBIT A

DEFINITIONS

“*Accounts*” means all rights to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a secondary obligation incurred or to be incurred, or (iv) for energy provided or to be provided.

“*Advance*” and “*Advances*” are defined in Section 2.1.

“*Agreement*” means this Credit Agreement, as the same may be amended, modified or restated from time to time in accordance with the terms hereof.

“*Annual EBIDA*” is defined in Section 10.5.

“*Applicable Rate*” means (i) for the Revolving Credit, a variable rate of interest equal to the One-Month LIBOR plus 2.00% per annum, subject to a floor of 2.00% per annum, and (ii) for the Term Loan, a fixed rate of interest equal to the 5 year Treasury Note yield plus 2.00% per annum, subject to a floor of 2.00% per annum, at the time of conversion. The Applicable Rate is subject to increase as provided in Section 10.4.

“*Authorized Representative*” means those persons shown on the list of officers provided by Borrower pursuant to Section 9.2(a)(v), or on any update of any such list provided by Borrower to Lender, or any further or different officer of Borrower so named by any Authorized Representative of Borrower in a written notice to Lender.

“*Borrower*” is defined in the introductory paragraph.

“*Business Day*” means a day (other than a Saturday or Sunday) on which banks are not authorized or required to be closed in Sacramento, California.

“*CPUC*” means the California Public Utilities Commission.

“*CAL ISO*” means California ISO, the independent grid operator.

“*Capital Lease*” means at any date any lease of Property which in accordance with GAAP is required to be capitalized on the balance sheet of the lessee.

“*Capitalized Lease Obligation*” means the amount of liability as shown on the balance sheet of any Person in respect of a Capital Lease as determined at any date in accordance with GAAP.

“*Cash Collateral Account*” is defined in Section 7.1.

“*Cash Collateralize*” means, to pledge and deposit with or deliver to Lender, as collateral for the Obligations, in each case, in Dollars and in such amount as Lender may reasonably require, and pursuant to documentation in form and substance reasonably satisfactory to Lender. “*Cash Collateral*” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“*Cumulative EBIDA*” is defined in Section 10.6.

“*Debt Service*” is defined in Section 10.5.

“*Debt Service Reserve Account*” is defined in Section 7.1.

“*Debtor Relief Laws*” means the United States Bankruptcy Code and all other liquidation, conservatorship, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“*Default*” means any event or condition the occurrence of which would, with the passage of time or the giving of notice, or both, constitute an Event of Default.

“*Default Rate*” means the Applicable Rate plus six percent (6.0%).

“*Dollars and \$*” mean lawful money of the United States.

“*DSCR*” is defined in Section 10.5.

“*Event of Default*” is defined in Section 11.1.

“*Fiscal Year End*” means December 31.

“*Flat Fee*” is defined in Section 4.8.

“*GAAP*” means generally accepted accounting principles as established and interpreted by the Governmental Accounting Standards Board (GASB) and as applied by Borrower.

“*Governmental Authority*” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Honor Date*” is defined in Section 4.3.

“*Indebtedness for Borrowed Money*” means, for any Person (without duplication), (i) all indebtedness created, assumed or incurred in any manner by such Person representing money borrowed (including by the issuance of debt securities), (ii) all indebtedness for the deferred purchase price of property or services (other than

trade accounts payable arising in the ordinary course of business not more than 90 days past due), (iii) all indebtedness secured by any Lien upon Property of such Person, whether or not such Person has assumed or become liable for the payment of such indebtedness, (iv) all Capitalized Lease Obligations of such Person, and (v) all obligations of such Person on or with respect to letters of credit, banker's acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money.

"Indemnified Liabilities" is defined in Section 12.5.

"Indemnified Person" is defined in Section 12.5.

"Initial Rate Set Date" means the date of issuance of the Promissory Note at which time Lender will determine the One-Month LIBOR which shall be in effect until the next Rate Change Date.

"ISP" is defined in Section 4.5.

"Issuance Fee" is defined in Section 4.8.

"JPA Members" mean the cities of San Diego, Chula Vista, La Mesa, Encinitas and Imperial Beach.

"Joint Powers Agreement" means the Joint Powers Agreement of Borrower effective as of October 1, 2019, and as amended from time to time.

"Launch Date" is defined in Section 2.1.

"Lender" is defined in the introductory paragraph.

"Letter of Credit Advance" and *"Letter of Credit Advances"* are defined in Section 2.1.

"Letter of Credit Note" is defined in Section 2.3.

"Lien" means any mortgage, lien, security interest, pledge, charge or encumbrance of any kind in respect of any Property, including the interests of a vendor or lessor under any conditional sale, Capital Lease or other title retention arrangement.

"Loan Documents" means this Agreement, the Notes, the Assignment of Debt Service Reserve Account, the Subordination Agreements and all other documents, certificates, instruments and agreements relating to the foregoing or otherwise executed by Borrower in connection with the Revolving Credit.

"Loan Fee" means one-fourth of one percent (0.25%) of the Revolving Credit Commitment, payable as specified in Section 5.1(a).

“Maintenance and Operation Costs” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and a consulting engineer, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

“Maturity Date” means, for any Note, the date so specified in such Note as the Maturity Date.

“Minimum DSRA Balance” means an amount not less than ten percent (10.0%) of the applicable Revolving Credit Commitment.

“Net Position” is defined in Section 10.5.

“Notes” refers collectively to the Promissory Note and, if applicable, the Letter of Credit Note(s) and/or the Term Note.

“Obligations” means and includes all loans, advances, debts, liabilities and obligations of Borrower to Lender, of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter owed by Borrower to Lender, whether in connection with the Loan Documents or otherwise, including without limitation all interest, fees, charges, expenses, attorneys’ fees and accountants’ fees chargeable to Borrower or payable by Borrower thereunder.

“One-Month LIBOR” means, as of each Rate Change Date or the Initial Rate Set Date, the rate determined by Lender to be the One-Month LIBOR rate as posted on Bankrate.com (or, if Lender determines, in its sole discretion, that this rate has become unavailable or unreliable, either temporarily, indefinitely or permanently, Lender may amend this Agreement and/or the Notes by designating a substantially similar rate. Lender may also amend and add a positive or negative margin (percentage added to or subtracted from the substitute rate) as part of the rate determination. In making these amendments, Lender may take into consideration any then-prevailing market convention for selecting a substitute rate and margin for the One-Month LIBOR. Such amendment to this Agreement and/or the Notes will be effective and bind Borrower ten (10) Business

Days after Lender gives written notice to Borrower without the need for any action or consent of Borrower) as in effect from time to time, which rate is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion.

“*Payment Date*” means, other than the Revolving Credit Termination Date or any Maturity Date, the 1st day of each calendar month.

“*Permitted Liens*” is defined in Section 10.10.

“*Person*” means an individual, partnership, corporation, company, limited liability company, association, trust, unincorporated organization or any other entity or organization, including a government or agency or political subdivision thereof.

“*Phase 1 Commencement*” means the enrollment and commencement of service to municipal customers comprising approximately 5.0% of Borrower’s total projected customer load in accordance with the Pro Forma, which commencement must occur no later than March 31, 2021 unless such date is extended by Lender.

“*Phase 2 Commencement*” means the enrollment and commencement of service to commercial and other non-residential customers comprising approximately 58.0% of Borrower’s total projected customer load in accordance with the Pro Forma, which commencement must occur no later than June 30, 2021 unless such date is extended by Lender.

“*Phase 3 Commencement*” means the enrollment and commencement of service to residential customers comprising approximately 37.0% of Borrower’s total projected customer load in accordance with the Pro Forma, which commencement must occur no later than January 31, 2022 unless such date is extended by Lender.

“*Phase 1 Step-Up*” means the increase in the Revolving Credit Commitment upon satisfaction of the conditions set forth in Section 9.2(a) and (b).

“*Phase 2 Step-Up*” means the increase in the Revolving Credit Commitment upon satisfaction of the conditions set forth in Section 9.2(a) and (c).

“*Profitability Requirement*” means, for any consecutive twelve (12) month period, a positive change in Borrower’s Net Position plus depreciation, amortization and interest expense in the amount of not less than \$30,000,000.00.

“*Pro Forma*” means an updated pro forma financial model prepared by Borrower and delivered to Lender by no later than February 1, 2021, in form and substance deemed acceptable to Lender in its sole discretion, to include, without limitation, start-up and overhead cost estimates, monthly and annual financial projections and revenue estimates, assumed opt-out rates and power portfolio composition, power supply cost assumptions, projected cash flows, financing requirements, working capital requirements, rate assumptions and rate changes, and phasing plan. Lender may condition its acceptance of the Pro Forma on a review and analysis (at Borrower’s sole cost and expense) and favorable opinion from a qualified independent energy consultant selected by Lender as

to the accuracy, quality and reliability of the data, assumptions and methodologies of the Pro Forma. Lender shall have no obligation to accept the Pro Forma if, for any reason, the Pro Forma materially differs from the pro forma financial model presented to Lender by Borrower on April 20, 2020.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“*Promissory Note*” is defined in Section 2.3.

“*Rate Change Date*” means the first calendar day of each calendar month.

“*Reimbursement Date*” is defined in Section 4.3.

“*Related Parties*” means, with respect to any Person, such Person’s affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s affiliates.

“*Resource Adequacy Contract*” means any agreement entered into by Borrower for the purpose of complying with CPUC resource adequacy requirements.

“*Responsible Officer*” means the Chief Executive Officer.

“*Revenues*” means the revenues of Borrower, as determined in accordance with GAAP; but excluding (i) any unrealized gain or loss resulting from changes in the value of investment securities, (ii) any gains on the sale or other disposition of fixed or capital assets not in the ordinary course of business and (iii) earnings resulting from any reappraisal, revaluation or write-up of fixed or capital assets.

“*Revolving Credit*” is defined in Section 2.1.

“*Revolving Credit Commitment*” means (i) from the date of this Agreement until the Phase 1 Step-Up, an amount equal to \$5,000,000.00 less the aggregate amount of outstanding Advances under the Revolving Credit; (ii) from the date of the Phase 1 Step-Up until the Phase 2 Step-Up, an amount equal to \$25,000,000.00 less the aggregate amount of outstanding Advances under the Revolving Credit; and (iii) from and after the date of the Phase 2 Step-Up, an amount equal to \$35,000,000.00 less the aggregate amount of outstanding Advances under the Revolving Credit.

“*Revolving Credit Termination Date*” means April 30, 2022.

“*SWIFT*” is defined in Section 4.6.

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and

structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*Term Loan*” means the amortizing term loan resulting from the conversion of outstanding Advances as provided in Section 2.4(b).

“*Term Note*” is defined in Section 2.4(b).

“*UCC*” means the Uniform Commercial Code as enacted in the State of California.

“*UCP*” is defined in Section 4.5.

“*Unreimbursed Amount*” is defined in Section 2.3.

“*Winding-Up*” means, in relation to a Person, a voluntary or involuntary case or other proceeding or petition seeking dissolution, liquidation, reorganization, administration, assignment for the benefit of creditors or other relief under any federal, state or foreign bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a custodian, trustee, receiver, liquidator or other similar official over that Person or any substantial part of that Person’s Properties.

“*Working Capital Advance*” is defined in Section 2.1.

EXHIBIT B

FORM OF REVOLVING CREDIT PROMISSORY NOTE

\$35,000,000.00

Date: _____

FOR VALUE RECEIVED, **SAN DIEGO COMMUNITY POWER**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of up to THIRTY FIVE MILLION and /100 DOLLARS (\$35,000,000.00), pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of April __, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Revolving Credit Promissory Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement, or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Borrower agrees to pay monthly payments of interest only on the unpaid principal balance of this Note as of each Payment Date beginning on June 1, 2020, with all subsequent payments due and payable on each Payment Date thereafter as provided in Section 3 of the Credit Agreement. Interest will accrue prior to maturity (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after maturity (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The outstanding principal balance of this Note and all accrued but unpaid interest thereon shall be due and payable in full on the Revolving Credit Termination Date. Under the terms of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that any Advances outstanding under this Note be converted into a Term Loan evidenced by a Term Note.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Its: _____

EXHIBIT C

FORM OF LETTER OF CREDIT NOTE

\$ _____

Date: _____

FOR VALUE RECEIVED, **SAN DIEGO COMMUNITY POWER**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of _____ (\$_____,000.00) pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of April __, 2020, between Borrower and Lender, together with interest thereon as provided herein and therein. All payments under this Letter of Credit Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Letter of Credit. This Note is executed in connection with a Letter of Credit issued by _____ ("*Issuing Bank*"), dated _____, in the face amount of \$ _____, in favor of _____ (as Beneficiary) and identified as number: _____ (the "*Letter of Credit*").

Draw or Demand under the Letter of Credit. Borrower directs and authorizes Lender to immediately advance funds under this Note to repay in full any demand or draw request form Beneficiary under the Letter of Credit (the "*Disbursement*").

Payment Terms. Borrower agrees to pay any Disbursement immediately upon demand from Lender and in no event less than three (3) calendar days from the date of the Disbursement (the "*Demand Date*"). From the date of the Disbursement to the Demand Date, Borrower shall pay interest only on the unpaid principal balance of this Note (whether by lapse of time, acceleration or otherwise) at the Applicable Rate and after the Demand Date (whether by lapse of time, acceleration or otherwise), whether before or after judgment, at the Default Rate, until paid in full.

Maturity Date. The repayment obligations from Borrower to Lender under this Note shall remain in full force and effect until the original Letter of Credit including any and all amendments is surrendered to Issuing Bank undrawn and cancelled to the satisfaction of Issuing Bank.

Credit Agreement and Cash Collateral. If the Letter of Credit has been issued and remains unexpired on the Revolving Credit Termination Date, then upon request by Lender, Borrower shall immediately provide Cash Collateral to Lender with a value of not less than 110% of the stated principal amount of this Note.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to accelerate this Note and declare all Advances and all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights and benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement Lender's rights and remedies under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Title: _____

DRAFT

EXHIBIT D

FORM OF TERM NOTE

\$ _____

Date: _____

FOR VALUE RECEIVED, **SAN DIEGO COMMUNITY POWER**, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et seq. ("*Borrower*"), promises to pay to the order of **RIVER CITY BANK** ("*Lender*") the principal sum of _____/100 DOLLARS (\$ _____), pursuant to the terms of that certain Credit Agreement (the "*Credit Agreement*") dated as of April __, 2020, between Borrower and Lender, together with interest on the unpaid principal balance from _____[date], calculated as described in the "Interest Calculation Method" paragraph using an interest rate of _____% (the "*Interest Rate*"), until paid in full. All payments under this Term Note (this "*Note*") shall be made to Lender at its address specified in the Credit Agreement or at such other place as the holder of this Note may from time to time designate in writing, in accordance with the terms of this Note and the Credit Agreement. Capitalized terms used but not defined in this Note shall have the definitions provided in the Credit Agreement.

Payment Terms. Under the terms of the Credit Agreement and subject to the conditions set forth therein, Borrower may request that all outstanding Advances under the Revolving Credit be converted to a Term Loan. This Note evidences a Term Loan made to Borrower as of _____[date] in the original principal amount of \$ _____, and will bear interest at the Interest Rate. Borrower will pay this loan in 59 equal principal payments of \$ _____ each and one final principal and interest payment of \$ _____. Borrower's first principal payment is due _____[date], and all subsequent principal payments are due on the same day of each month after that. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning _____[date], with all subsequent interest payments to be due on the same day of each month after that. Borrower's final payment will be due _____[date], and will be for all principal and all accrued interest not yet paid.

Interest Calculation Method. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Note.

Interest After Default. Upon default, the interest rate on this Note shall, if permitted under applicable law, immediately increase by adding an additional 6.000 percentage point margin ("*Default Rate Margin*"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default.

Default and Acceleration. Upon the occurrence of any Event of Default described in Section 11.1 of the Credit Agreement, Lender or any permitted holder of this Note may exercise any or all of the rights and remedies set forth therein, including the exercise of Lender's option to

accelerate this Note and declare all indebtedness under this Note then outstanding to be immediately due and payable, with or without notice to Borrower, as applicable.

Miscellaneous. This Note and the holder hereof are entitled to all of the rights benefits provided for in the Credit Agreement. All of the terms, covenants and conditions contained in the Credit Agreement are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Credit Agreement, the terms and provisions of the Credit Agreement shall control.

This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

This Note will be construed in accordance with, and governed by, the internal laws of the State of California.

Borrower promises to pay all costs and expenses (including reasonable attorneys' fees and expert witnesses' fees) suffered or incurred by Lender or subsequent holder of this Note in the collection of this Note or the enforcement any rights of Lender under the Credit Agreement.

Borrower hereby waives presentment for payment and demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations, presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) the obligations evidenced by this Note or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, if any; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify the terms of this Note without the consent of or notice to anyone other than the party with whom the modification is made.

Prior to signing this Note, Borrower read and understood all the provisions of this Note and the Credit Agreement, including the variable interest rate provisions in the Credit Agreement. Borrower agrees to the terms of this Note and the Credit Agreement. Borrower acknowledges receipt of complete copies of this Note and the Credit Agreement.

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Its: _____

DRAFT

EXHIBIT E

FORM OF LETTER OF CREDIT APPLICATION

DRAFT

EXHIBIT F

FORM OF ASSIGNMENT OF DEPOSIT ACCOUNTS

Grantor: San Diego Community Power
9601 Ridgehaven Ct.
San Diego, CA 92123

Lender: RIVER CITY BANK
Business Banking Group
2485 Natomas Park Drive
Sacramento, CA 95833

THIS ASSIGNMENT OF DEPOSIT ACCOUNTS dated April __, 2020 is made and executed among San Diego Community Power (“Grantor”) and RIVER CITY BANK (“Lender”).

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit account(s) described below, to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word “Collateral” means the following described account(s) (“Account”):

A deposit account from Grantor with Lender with reference number _____, and all amendments, extensions, renewals, replacements of the account (all called the “Debt Service Reserve Account”), and all existing and future amounts in the Debt Service Reserve Account, and all existing and future interest and other earnings on the Debt Service Reserve Account, and all proceeds. The Debt Service Reserve Account will at all times maintain the Minimum DSRA Balance (as defined in the Credit Agreement);

A deposit account from Grantor with Lender with reference number _____, and all amendments, extensions, renewals, replacements of the account (all called the “Cash Collateral Account”), and all existing and future amounts in the Cash Collateral Account, and all existing and future interest and other earnings on the Cash Collateral Account, and all proceeds. The Cash Collateral Account will at all times have a minimum account balance of \$5,000,000.00; and

All other accounts of Grantor with Lender, subject to the terms and conditions of lockbox account agreements approved by Lender (collectively, the “Accounts”);

together with (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to any Account; (C) any and all proceeds from the Accounts; and (D) all renewals, replacements and substitutions for any of the foregoing.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor’s Accounts with Lender (whether checking, savings, or some other account) other than any lockbox accounts. This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

GRANTOR’S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Ownership. Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

No Prior Assignment. Grantor has not previously granted a security interest in the Collateral to any other creditor.

No Further Transfer. Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor’s rights in the Collateral except as provided in this Agreement.

No Defaults. There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

Proceeds. Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

Validity; Binding Effect. This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Collateral. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. Grantor will promptly notify Lender of any change to Grantor's name or its jurisdiction of organization.

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there is no longer any Indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the applicable rate charged under the Note (as selected by Lender in its sole discretion) from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of such Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. This Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

DEFAULT. Any Default or Event of Default under the Credit Agreement shall constitute an Event of Default under this Agreement.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

Accelerate Indebtedness. Lender may declare all Indebtedness of Borrower to Lender immediately due and payable, without notice of any kind to Borrower or Grantor.

Application of Account Proceeds. Lender may take directly all funds in the Account and apply them to the Indebtedness. If an Account is subject to an early withdrawal penalty, that penalty shall be deducted from that Account before its application to the Indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the Indebtedness will be paid to Borrower or Grantor as the interests of Borrower or Grantor may appear. Borrower agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Accounts to the Indebtedness. Lender also shall have all the rights of a secured party under the California Uniform Commercial Code (“Code”), even if an Account is not otherwise subject to the Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

Transfer Title. Lender may effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor’s attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

Other Rights and Remedies. Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the Code, at law, in equity, or otherwise.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement.

Remedies Cumulative. Except as may be prohibited by applicable law, all of Lender’s rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and any election by Lender to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor’s failure to perform, shall not affect Lender’s right to declare a default and exercise its remedies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys’ Fees; Expenses. Grantor agrees to pay upon demand all of Lender’s costs and expenses, including Lender’s attorneys’ fees and Lender’s legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender’s attorneys’ fees and legal expenses whether or not there is a lawsuit, including attorneys’ fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. **This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of California.**

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender’s request to submit to the jurisdiction of the courts of Sacramento County, State of California.

Joint and Several Liability. All obligations of Borrower and Grantor, if they are different, under this Agreement shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Borrower and Grantor signing below is responsible for all obligations in this Agreement.

Preference Payments. Any monies Lender pays because of an asserted preference claim in Borrower’s or Grantor’s bankruptcy will become a part of the Indebtedness and, at Lender’s option, shall be payable by Borrower and Grantor as provided in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other party, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in payment for the Collateral; (3) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (4) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

Waiver of Co-Obligor's Rights. If more than one person is obligated for the Indebtedness, Grantor irrevocably waives, disclaims and relinquishes all claims against such other person which Grantor has or would otherwise have by virtue of payment of the Indebtedness or any part thereof, specifically including but not limited to all rights of indemnity, contribution or exoneration.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful

money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Code:

Account. The word “Account” means the deposit account(s) described in the “Collateral Description” section.

Agreement. The word “Agreement” means this Assignment of Deposit Accounts, as this Assignment of Deposit Accounts may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Accounts from time to time.

Borrower. The word “Borrower” means San Diego Community Power and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word “Collateral” means all of Grantor’s right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Credit Agreement. The words “Credit Agreement” mean the Credit Agreement of even date herewith between Borrower and Lender, as amended or modified from time to time.

Default. The word “Default” means the Default set forth in this Agreement in the section titled “Default”.

Event of Default. The words “Event of Default” mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word “Grantor” means San Diego Community Power.

Indebtedness. The word “Indebtedness” means all indebtedness of Borrower under the Credit Agreement, the Note or any of the Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or any of the Related Documents.

Lender. The word “Lender” means RIVER CITY BANK, its successors and assigns.

Note. The word “Note” means any and all Notes (as defined in the Credit Agreement) executed by Borrower in connection with a Revolving Credit or the Term Loan (as defined in the Credit Agreement), together with all renewals, extensions, modifications, consolidations and replacements of such Notes.

Related Documents. The words “Related Documents” mean all promissory notes, credit agreements, loan agreements, environmental agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

GRANTOR HAS READ AND UNDERSTANDS ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNTS AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED APRIL __, 2020.

**GRANTOR:
SAN DIEGO COMMUNITY POWER**

By: _____

Its _____

EXHIBIT G

FORM OF REQUEST FOR ADVANCE

LOAN NO. 5084549243-101

BORROWER: SAN DIEGO COMMUNITY POWER HEREBY REQUESTS AN ADVANCE UNDER THE ABOVE-REFERENCED REVOLVING CREDIT IN ACCORDANCE WITH THE TERMS OF THE CREDIT AGREEMENT DATED AS OF APRIL ___, 2020, BETWEEN BORROWER AND LENDER.

REQUEST DATE: _____

AMOUNT OF ADVANCE: \$ _____

PURPOSE OF ADVANCE

___ **WORKING CAPITAL ADVANCE. YOU ARE AUTHORIZED AND INSTRUCTED TO DEPOSIT THE ADVANCE PROCEEDS INTO CHECKING ACCOUNT:** _____

___ **ATTACHED ARE COPIES OF INVOICES AND OTHER DOCUMENTATION IN SUPPORT OF THIS REQUEST.**

___ **LETTER OF CREDIT ADVANCE FOR THE BENEFIT OF:** _____

___ **YOU ARE AUTHORIZED TO REMIT THIS PAYMENT DIRECTLY TO A THIRD PARTY AS FOLLOWS:**

COMPANY NAME: _____

WIRE INSTRUCTIONS

BANK NAME: _____

ADDRESS: _____

ROUTING NUMBER: _____

ACCOUNT NUMBER: _____

OTHER REFERENCE: _____

BORROWER CERTIFICATION

BORROWER HEREBY CERTIFIES THAT:

- (I) AFTER MAKING THE REQUESTED ADVANCE, THE SUM OF ALL OUTSTANDING ADVANCES SHALL NOT EXCEED THE REVOLVING CREDIT COMMITMENT THEN IN EFFECT;
- (II) AS OF THE REQUEST DATE, THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THE CREDIT AGREEMENT ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH REQUEST DATE TO THE SAME EXTENT AS THOUGH MADE ON AND AS OF SUCH DATE, EXCEPT TO THE EXTENT SUCH REPRESENTATIONS AND WARRANTIES SPECIFICALLY RELATE TO AN EARLIER DATE, IN WHICH CASE SUCH REPRESENTATIONS AND WARRANTIES ARE TRUE AND CORRECT IN ALL MATERIAL RESPECTS ON AND AS OF SUCH EARLIER DATE; PROVIDED THAT, IN EACH CASE, SUCH MATERIALITY QUALIFIER SHALL NOT BE APPLICABLE TO ANY REPRESENTATIONS AND WARRANTIES THAT ALREADY ARE QUALIFIED OR MODIFIED BY MATERIALITY IN THE TEXT THEREOF; AND
- (III) AS OF THE REQUEST DATE, NO EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING OR WOULD RESULT FROM THE CONSUMMATION OF THE BORROWING CONTEMPLATED HEREBY.
- (IV) THIS ADVANCE WILL BE USED FOR PURPOSES PERMITTED UNDER THE TERMS OF THE CREDIT AGREEMENT AND NO PORTION OF THIS ADVANCE WILL BE USED TO FUND OPERATING LOSSES.

SAN DIEGO COMMUNITY POWER

BY: _____

NAME: _____

ITS: _____

EXHIBIT H

DOCUMENT SUMMARY AND NOTICE OF FINAL AGREEMENT

Borrower has been provided with the following documents in connection with Loan No. 5084549243-101:

Credit Agreement with Exhibits

A – Definitions

B – Form of Revolving Credit Promissory Note

C – Form of Letter of Credit Note

D – Form of Term Note

E – Form of Letter of Credit Application

F -- Form of Assignment of Deposit Accounts

G – Form of Request for Advance (RLOC)

H -- Document Summary and Notice of Final Agreement

Revolving Credit Promissory Note

Assignment of Deposit Accounts

Invoice

BORROWER REPRESENTS AND WARRANTS:

- 1) IT HAS READ, UNDERSTOOD AND AGREES WITH THE TERMS OF EACH DOCUMENT LISTED ABOVE AND THIS AGREEMENT;
- 2) IT CONFIRMS THAT THERE ARE NO CONFLICTS BETWEEN THE TERMS OF THE DOCUMENTS AND ITS UNDERSTANDING OF THE TRANSACTION;
- 3) THE WRITTEN DOCUMENTS ISSUED IN CONNECTION WITH THE LOAN REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
- 4) THE WRITTEN DOCUMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OR UNDERSTANDINGS OF THE PARTIES.
- 5) IT HAS HAD AN OPPORTUNITY TO DISCUSS THE LOAN TRANSACTION WITH ITS COUNSEL.

[Remainder of Page Intentionally Left Blank]

BORROWER:

SAN DIEGO COMMUNITY POWER

By: _____

Name: _____

Its: _____

DRAFT

April 23, 2020

\$5,000,000.00 U.S.

PROMISSORY NOTE

FOR VALUE RECEIVED, San Diego Community Power, a California joint powers authority ("Borrower"), promises to pay to Emerald Blue, LLC, a California limited liability company ("Lender"), the principal sum of Five Million Dollars (\$5,000,000.00) U.S. dollars (the "Note"), on or prior to April 23rd, 2023 ("Maturity Date"), and to pay interest on the principal sum outstanding at the rate of interest set forth herein. The principal of, and interest on, this Note is payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the address of the Lender as may be designated in writing by the Lender from time to time. This Note is issued as of April 23, 2020 ("Issuance Date").

This Note is subject to the following additional provisions:

1. Use of Funds. The principal amount of the Note will be advanced in a single lump sum for the purpose of funding a collateral account ("Collateral") to be held by River City Bank ("Senior Lender"). The Collateral will secure an initial debt funding to Borrower by Senior Lender in the amount of Five Million Dollars (\$5,000,000) ("Senior Loan"). The Senior Loan will be used for startup costs associated with Borrower's community choice aggregation program and is the first funding tranche of a Forty Million Dollars (\$40,000,000) facility to provide working capital for Borrower's purchase of power for its operations ("Facility"). The commitment of the Senior Lender to make the Senior Loan available to the Borrower is contingent on the funding of the Collateral and the Collateral will be released by Senior Lender upon the occurrence of certain release conditions for the Collateral as set forth in Section 7.3 of that certain Loan Agreement of even date herewith between Borrower and Senior Lender. It is anticipated that the release conditions will be fulfilled by December 31, 2022. The account in which the Collateral is held by Senior Lender will accrue interest, which interest will be released on a quarterly basis to Lender, commencing with the first calendar quarter after which Borrower has commenced operations for the first phase of customers (which is currently anticipated to be March, 2021) ("Launch Date"). Such interest earned on the Collateral is separate from the payment of interest by Borrower pursuant to this Note.

2. Subordination of Note. Lender agrees that the repayment of indebtedness evidenced by this Note is subordinated in right of payment, to the extent and in the manner provided in that certain Subordination Agreement between Lender and Senior Lender of even date herewith.

3. Maturity Date. The "Maturity Date" of this Note will be the later of (i) the release of the Collateral by Senior Lender upon the satisfaction of the release conditions contained in the Loan Agreement; or (ii) ninety (90) days following the date upon which Senior Lender draws on the Collateral as a result of a default by Borrower under the Loan Agreement.

4. Quarterly Interest Payments.

(a) The outstanding principal balance of this note shall bear interest at a rate equal to the Reference Rate plus two percent (2%). The “Reference Rate” means and refers to the one month London Inter-Bank Offered Rate (“LIBOR”) or at such time as LIBOR is no longer available, then such future indexed rate such as the Secured Overnight Financing Rate that is generally accepted as the closest approximation to the one month LIBOR for commercial loans in the reasonable discretion of Lender.

(b) Interest payments by Borrower will commence on a quarterly basis in arrears with the first interest payment payable within sixty (60) days of the end of the calendar quarter immediately following the Launch Date and each calendar quarter thereafter, provided, however, that quarterly interest payments by Borrower are subject to the conditions precedent that Borrower is in compliance with all quarterly financial covenants to the Senior Lender under the Loan Agreement (which shall be measured within 45 days of the end of each calendar quarter) and Borrower is not in default under the terms of the Facility. To the extent that Borrower is unable to make an interest payment, such interest will be added to the accrued and unpaid interest accumulated under the Note.

(c) The entire balance of interest that has accrued and remains unpaid as of the Maturity Date (as defined below) will be paid together with the outstanding principal balance as set forth in Section 4.

5. Payments of Principal and Unpaid Accrued Interest. Within thirty (30) days of the Maturity Date, the Borrower will pay to Lender the outstanding principal balance due on the Note together with all accrued and unpaid interest as follows: (i) if the Collateral has been released by Senior Lender, then the entire balance in the Collateral account will be paid via wire transfer to an account designated by Lender and Borrower will pay to Lender any additional balance of accrued and unpaid interest; and (ii) if the Collateral is drawn by Senior Lender as a result of a default, then Borrower will repay Lender from the revenues generated by the collection of accounts receivable from the customers of Borrower, subject to any limitations on payment which are contained in the Subordination Agreement. If payments are suspended as a result of restrictions in the Subordination Agreement, then interest will continue to accrue on the unpaid principal balance and Borrower will repay the outstanding balance of principal and accrued and unpaid interest within one hundred eighty (180) days of the date upon which such restrictions are no longer applicable.

6. Events of Default. The following shall constitute an “Event of Default” for the purposes of this Note:

(a) Borrower defaults in the payment of principal or interest on this Note and such default is not cured within thirty (30) days of the date thereof; or

(b) The Borrower is adjudicated as bankrupt or insolvent, or the consent by Borrower to the institution of bankruptcy or insolvency proceedings against him or the filing by Borrower of a petition or answer or consent seeking release under the federal bankruptcy laws, or

any other applicable federal or state law, or the consent by Borrower to the filing of any such petition.

7. Remedies on Default. Lender shall have the right to pursue all remedies available at law or equity against Borrower upon the occurrence of an Event of Default, subject to any restrictions contained in the Subordination Agreement.

8. Lost or Destroyed Note. If this Note shall be mutilated, lost, stolen or destroyed, the Borrower shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership thereof, and indemnity, if requested, all reasonably satisfactory to the Borrower.

9. Attorneys' Fees and Costs. Should any litigation be commenced between the parties hereto or their personal representatives concerning any provision of this Agreement or the rights and duties of any person in relation thereto, the party prevailing in such litigation shall be entitled to, in addition to such other relief that may be granted, a reasonable sum as and for their or his or its attorneys' fees in such litigation.

10. Modifications, Amendments, Terminations. This rights and preferences of the Lender of this Note may not be changed, modified, amended or terminated except by a writing signed by the Lender and Borrower.

11. Interpretation. Caption headings in this Note are for convenience purposes only and are not to be used to interpret or define the provisions of this Note. If a court of competent jurisdiction finds any provision of this Note to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other person or circumstances, and all provisions of this Note in all other respects shall remain valid and enforceable.

12. Indemnification. Borrower agrees to Indemnify and hold harmless Lender, its directors and officers, representatives, and its affiliates, including but not limited to Hammond Climate Solutions, LLC, and Tara Hammond as an individual, from and against all damages, losses, costs and expense, which they may incur by reason of the failure of the Borrower to fulfill any of the terms, conditions or agreements of this Note, or by reason of any breach of the representations and warranties by the Borrower herein or in any document provided by Borrower to Lender.

12. Governing Law and Venue. THE TERMS OF THIS NOTE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA. ANY ACTION TO ENFORCE THE TERMS OF THIS NOTE SHALL BE BROUGHT IN THE APPLICABLE FEDERAL OR STATE COURTS OF THE COUNTY OF SAN DIEGO AND THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF SUCH COURTS.

[Remainder of Page Intentionally Left Blank—Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this instrument to be duly executed by an officer thereunto duly authorized.

“BORROWER”

SAN DIEGO COMMUNITY POWER,
A California joint powers authority

By: _____
Cody Hooven
Interim Executive Officer

DRAFT

SAN DIEGO COMMUNITY POWER
Staff Report – Item 10

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Agreement with Calpine Energy Solutions, LLC. for Data Management and Customer Call Center Services

Date: April 23, 2020

Recommendation

1. Approve Data Management and Customer Service Center agreement with Calpine Energy Solutions, LLC. for a 3-year term beginning in March 2021 with optional 1-year extension.
2. Authorize the Interim Executive Officer to execute the agreement in a form approved by the Interim Executive Director and reviewed and approved as to form by the General Counsel.

Background

On March 11, 2020 SDCP issued Request for Proposal (RFP) 20-001 for data management services and a customer service center. To view the full scope of services in the RFP, please see pages 4-11 of the RFP, found here: <https://www.sandiego.gov/sustainability/clean-and-renewable-energy/ccea>) The RFP was organized into four task areas including:

1. Managing SDCP customer account data;
2. Exchanging customer usage, billing and payment data with San Diego Gas & Electric (SDG&E);
3. Responding to SDCP customer service calls; and
4. Addressing SDCP customer service issues.

The RFP was sent to hundreds of recipients through the City of San Diego's PlanetBids platform. Bidders were invited to bid on the full scope of services. A total of 5 proposals were received by the April 1, 2020 deadline. Bids were reviewed and scored according to evaluation criteria set forth in the RFP on page 15. Two bidders – Calpine Energy Solutions and GridX - were short listed and participated in interviews on April 10 and April 13, respectively.

Evaluation team members included: Cody Hooven, SDCP Interim Executive Officer; Chad Colton, Energy and Regulatory Program Manager, City of San Diego; Sam Kang, Managing Director at

Pacific Energy Advisors; John Dalessi, President and CEO at Pacific Energy Advisors; and Tiffany Law, Director of Finance & Administrative Services at Monterey Bay Community Power.

Analysis and Discussion

Term and Task Areas. Staff is requesting approval of a three-year agreement with Calpine Energy Solutions, LLC. (“Calpine”) covering all task areas outlined above. The contract is scheduled to begin on the effective date and will conclude on April 20, 2024, a timeframe that is anticipated to cover both pre-launch tasks through all phases of customer enrollment and initial service of all customers. The agreement also includes an optional one-year extension to April 20, 2025.

Reasons for Selection. Among the finalist companies, Calpine received the highest composite score in all four evaluation categories (see page 15 of the RFP, found here: <https://www.sandiego.gov/sustainability/clean-and-renewable-energy/ccea>). Calpine was ultimately selected on the merits of their extensive experience providing data management and customer service to 17 operational CCAs in California, as well as on the value-added services which they were able to tailor to SDCP’s anticipated needs during startup and during continued operations. These value-added services include:

1. Partnership with Energy Choice California to operate a union-friendly locally based Customer Call Center.
2. Collaboration with See Change Institute for data-backed analytics to manage customer opt out.
3. Partnership with Cleantech San Diego and with San Diego Urban Sustainability Coalition on community engagement and education efforts.
4. Active engagement and testing of SDG&E’s new Envision Project CRM system.
5. Support for SDCP’s Community Development Strategic Plan at no additional cost to SDCP.
6. 3% community give-back
7. Waiver of payments until February 2021.

Calpine’s team proved very knowledgeable during the interview process, and staff is confident that SDCP will be well served by Calpine’s participation in future planning and negotiations with SDG&E. Calpine’s service fees are a \$25,000 per month fixed fee and \$0.85 per meter. Calpine will waive the first \$2 million of service fees in the form of an account credit, which yields an effective average cost per meter of \$0.76 for the 36-month contract, the lowest price for any CCA to date. Calpine has an industry wide-reputation for providing excellent service to the operational CCA programs which they serve in California.

Contract Document. The attached Agreement was developed by BB&K, SDCP’s general legal counsel. It includes a detailed scope of work and description of Calpine’s monthly pricing structure and rates per customer account for data management and customer service over the 36-month contract period. SDCP is still in the process of finalizing agreement language with Calpine, and is therefore requesting approval of the agreement in substantially the form

attached hereto, with such changes as are approved by the Interim Executive Director and reviewed and approved as to form by the General Counsel.

Fiscal Impact

Approximately \$11.9 million over the term of the agreement.

Attachments:

Attachment A: Agreement between SDCP and Calpine Energy Solutions, LLC.

Attachment B: Scope of Services and Compensation.

DATA MANAGEMENT AGREEMENT BY AND BETWEEN SAN DIEGO COMMUNITY POWER ENERGY AND CALPINE ENERGY SOLUTIONS LLC

1. PARTIES AND DATE.

This Data Management Agreement (“**Agreement**”) is made and entered into this _____ day of April, 2020 (“**Effective Date**”), by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and CALPINE ENERGY SOLUTIONS, LLC, a California limited liability company (“**Consultant**”). SDCP and Consultant are sometimes individually referred to as a “**Party**” and collectively as “**Parties**.”

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assumes responsibility for the provision of certain professional services required by SDCP as part of its community choice aggregation program on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing data manager services and is familiar with the plans of SDCP.

In addition, Consultant is willing to advance funds to SDCP to cover the costs of certain community choice aggregation program services necessary for CCA launch and operations, up to the Power Start Date, as defined in Exhibit A. SDCP will reimburse Consultant with interest for such advances, as set forth herein. Consultant is willing to satisfy certain California Public Utilities Commission (“**CPUC**”) bond requirements on SDCP’s behalf until the CCA program is generating revenue to SDCP, and at such time will relieve Consultant from such requirements, as set forth herein.

2.2 Project.

SDCP desires to engage Consultant to render such professional services for SDCP’s community choice aggregation program (“**Project**”), as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

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

3.1.2 Term. This Agreement shall be effective on the Effective Date. Unless earlier terminated as provided herein, this Agreement shall remain in effect through **April 30, 2024** (“**Initial Term**”). At the end of the Initial Term, the Agreement shall renew on an annual basis for successive one (1) year terms (each, a “**Renewal Term**”), unless a Party provides six (6) months prior written notice of its intent not to extend the term of the Agreement. Consultant shall provide the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

3.2 Responsibilities of Consultant.

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

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant’s conformance with the Schedule, SDCP shall respond to Consultant’s submittals in a timely manner.

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

3.2.4 Advances for CCA Launch and Startup Operations. Consultant will provide cash advances to SDCP, up to a maximum of \$2,000,000 (“**Advances**”). SDCP may make requests for Advances from time to time. Each request shall include a description of the expense that the Advance will be used for. All Advances must be submitted prior to the Power Start Date and approved by Consultant as qualified CCA Services provided by other contractors, including governance and marketing services. SDCP shall reimburse Consultant for all such Advances made to SDCP, plus the additional sum 1-Month LIBOR plus two percent (2%) interest per annum to compensate Consultant for its administrative costs and the cost of providing funds for the Advances. Consultant shall notify SDCP of the total amount of Advances, including interest owed, as of the Power Start Date. The amount of Advances amount including interest shall be reimbursed in twelve equal monthly installments beginning ninety (90)

days after the Power Start Date (“**Advance Reimbursement Payments**”). Full reimbursement shall be made on or before fifteen (15) months after the Power Start Date. The obligations of SDCP to reimburse the Consultant and the interest that accrues thereupon will be memorialized by the execution of a promissory note, which is attached hereto as Exhibit B.

3.3 CONDITIONS TO CONSULTANT’S PERFORMANCE.

3.3.1 Information and Assistance. Upon Consultant’s reasonable request, SDCP shall provide such information and assistance as is reasonably required for Consultant to provide the Services. If SDCP fails to provide Consultant with such requested information or assistance, then Consultant shall continue to provide in a timely manner any such portion(s) of the affected Services that Consultant can reasonably provide to the extent possible in the absence of such information or assistance. Notwithstanding any provision to the contrary herein, failure by SDCP to provide Consultant with such information or assistance shall not constitute an Event of Default; provided, however, that Consultant’s performance or lack of performance under this Agreement shall be excused to the extent that it is materially hindered, prevented or impacted as a result of SDCP’s failure or inability to provide such information or assistance.

3.3.2 Notification. SDCP shall notify all other relevant parties, including, but not limited to, its energy supplier (“**Supplier**”), the Utility Distribution Company (“**UDC**”), which is currently San Diego Gas & Electric, and SDCP’s lender(s), as necessary, of the existence of this Agreement and Consultant’s role as contemplated in this Agreement.

3.3.3 SDCP’s Representative. SDCP hereby designates the SDCP Executive Director, or designee, to act as its representative for the performance of this Agreement (“**SDCP’s Representative**”). SDCP’s Representative shall have full authority to represent and act on behalf of SDCP for all purposes under this Agreement.

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

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

3.3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the

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

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

3.3.8 Insurance.

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

3.3.8.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Property shall not include electronic data or computer coding in any form.. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office 31249.00001\31836293.2

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

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

3.3.8.3 Professional Liability. Consultant shall procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

3.3.8.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide copies of blanket endorsements to add the following provisions to the insurance policies:

(A) General Liability.

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

(ii) The Commercial General Liability policy shall give SDCP, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 04 13 and 20 3704 13, or endorsements providing the equivalent or broader coverage.

(iii) The additional insured coverage under the Commercial General Liability policy shall be "primary and non-contributory" and will not seek

contribution from SDCP's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13, or endorsements providing the exact same coverage.

(B) Automobile Liability.

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

(C) Workers' Compensation and Employers Liability Coverage.

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

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

(D) All Coverages.

(i) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance.

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

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

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

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

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

(vii) Neither SDCP nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

3.3.8.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to SDCP, its directors, officials, officers, employees, agents and volunteers. This requirement, however, will not apply to a separately purchased errors and omissions policy.

3.3.8.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to SDCP. Consultant shall guarantee that, at the option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees,

agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

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

3.3.8.8 Verification of Coverage. Consultant shall furnish SDCP with original certificates of insurance effecting coverage required by this Agreement on forms reasonably satisfactory to SDCP. The certificates for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates must be received and approved by SDCP before work commences.

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

3.4 Fees and Payments.

3.4.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit A. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.4.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized invoice which shall include all fees related to Services during the previous month and Advance Reimbursement Payments starting after the Power Start Date. SDCP shall, within 30 days of receiving such invoice, review the invoice and pay all approved charges thereon.

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

3.4.4 Extra Work. At any time during the term of this Agreement, SDCP may request that Consultant perform Extra Work. As used herein, "**Extra Work**" means any work which is determined by SDCP to be necessary for the proper completion of the Project, but

which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, or be compensated for, Extra Work without written authorization from SDCP's Representative.

3.4.5 Prevailing Wages. Unless otherwise agreed to in writing, Consultant agrees to not undertake any work which requires the payment of prevailing wage rates under California Labor Code §§ 1720 *et seq.*, 1170 *et seq.*, and 8 Cal. Code of Regulations § 16000 *et seq.*

3.5 Accounting Records.

3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. No more than once per year, Consultant shall allow a representative of SDCP, at SDCP's sole cost and expense, during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement. Any audit or inspection shall, at Consultant's exclusive option, take place off of Consultant's premises.

3.6 General Provisions.

3.6.1 Termination and Expiration of Agreement; Meet and Confer.

3.6.1.1 Termination for Convenience. SDCP may, by providing six (6) months written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof. During the notice period, Consultant shall continue to provide, and SDCP shall continue to pay for, Services. Upon termination, Consultant shall be compensated in accordance with this Section 3.6, only for those services which have been adequately rendered to SDCP, and Consultant shall be entitled to no further compensation; provided, however, that SDCP will pay Consultant all of the following: (i) all outstanding Advance Reimbursement Payments, (ii) all start-up cost incurred by Consultant, including staff time, (iii) all costs/payments incurred/made/owed by Consultant to any and all subcontractors, (iv) all costs incurred by Consultant in building out the call-center, (v) all moneys credited to SDCP pursuant to Section 5 of Exhibit A, "Waiver of Service Fees", (vi) all moneys and interest owed under Section 3.2.4 "Advances for CCA Launch and Startup Operations", (vii) SDCP shall replace the full amount of the CPUC bond posted by Consultant pursuant to Exhibit A, Section 4 "Bonds" and shall reimburse consultant for all costs incurred by Consultant related to this Section, (viii) any and all documented out-of-pocket costs incurred by Consultant, (collectively, "**Termination Payment**"), provided, however, that if such termination for convenience shall take effect on or after April 30, 2022, and SDCP has fully paid all invoiced amounts up that date, then SDCP shall not be liable for

items (i) through (v) inclusive in the foregoing. Consultant may not terminate this Agreement except for cause.

3.6.1.2 Termination for Cause. If any one of the following events (each an “**Event of Default**”) occurs with respect to a Party, then the other Party may terminate this Agreement (inclusive of Exhibits and Addenda) upon written notice to the defaulting Party: (i) with respect to SDCP, SDCP fails to pay amounts due hereunder, including replacement of the CPUC bond posted by Consultant on behalf of SDCP, and such failure continues for seven (7) business days following written notice from Consultant; (ii) either Party defaults in the observance or performance of any of its material covenants or agreements in this Agreement and such default continues uncured for twenty (20) business days following written notice to the defaulting Party; (iii) either Party makes an assignment for the benefit of creditors (other than a collateral assignment to an entity providing financing to such Party), files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as they become due; or (iv) with respect to SDCP, SDCP fails to satisfy UDC's credit-worthiness requirements set forth in the UDC tariffs and such failure continues uncured for twenty (20) business days following written notice to SDCP from UDC.

3.6.1.3 Effect of Termination. Upon the date of expiration or termination of this Agreement: (i) Consultant shall immediately cease providing Services and Extra Work hereunder; and (ii) the Termination Payment and (iii) any and all outstanding moneys due to Consultant from SDCP, if any will become due within ninety (90) days.

Upon such expiration or termination, and upon request of SDCP, Consultant shall reasonably cooperate with SDCP to ensure a prompt and efficient transfer of all data, documents and other materials to SDCP or a new services provider, in an industry standard format or formats, and in a manner such as to attempt to minimize the impact of expiration or termination on SDCP's customers. Consultant shall develop with reasonable assistance from SDCP a written transition plan specifying in detail all activities, and the timing of such activities, necessary to facilitate an orderly and effective transition of Services. Consultant shall provide to SDCP customer data and documentation, and other Consultant non-proprietary information reasonably requested by SDCP in connection with the transition that is reasonably sufficient to enable a new services provider to fully assume the provision of the transitioning services. Consultant shall provide transition assistance in such a manner as to attempt to reasonably: (a) ensure the uninterrupted performance of the Services, (b) with no degradation in quality, and (c) to avoid disruption in the operation. If SDCP is the defaulting Party, SDCP agrees to pay Consultant reasonable compensation for additional services performed in connection with such transfer, to the extent not otherwise provided for or contemplated in the Agreement. Consultant shall (i) return all documents and other materials received from SDCP and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in

Consultant's possession that contain SDCP customer data; provided, however, that Consultant may retain copies of information necessary for Consultant's tax, billing or other financial purposes, to be used solely for such purposes, as well as Residual Backups (as defined in 3.6.4.1, below).

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

3.6.1.5 Program Start Delay. If at any time SDCP elects to delay the Power Start Date by more than six (6) months, or such a length of time as mutually agreed upon by the Parties, SDCP shall pay Consultant all outstanding principal balance of the Advances made plus accrued interest, and the amount of any outstanding bond(s) posted by Consultant on behalf of SDCP. The moneys herein stated shall be due and payable thirty (30) days after the date of invoice by Consultant to SDCP. If the aggregate amount due is greater than \$150,000, then SDCP will commence making payments of any moneys advanced, plus interest at 5 percent per annum, in six (6) equal monthly installments on that date, or the number of installments mutually agreed upon by the Parties. This paragraph shall not apply to delays to the Power Start Date of six (6) months or less.

Consultant may, at its sole discretion, upon complete repayment by SDCP of all moneys due as outlined herein, reinstate the availability of the Advances and CPUC bond payment to SDCP to use as provided for in this Agreement once the Power Start Date delay expires.

In the event of a delay, the Parties agree to extend the Initial Term of this Agreement automatically by the same length of time as the delay to the Power Start Date.

3.6.2 Dispute Resolution. The Parties shall meet and confer together in good faith regarding any dispute, controversy or claim (each, a "**Dispute**") arising out of or relating to this Agreement, or any breach or alleged breach hereof, prior to either Party declaring a breach of the Agreement. A meet and confer shall occur within ten (10) business days of any Dispute whereby the Parties agree to cooperate in good faith to resolve the Dispute, and may use a mutually agreeable third party to resolve such Dispute. In no event shall either Party be delayed or impeded from exercising any of its rights at law or equity, including, without limitation, petitioning a court for provisional relief, including injunctive relief, prior to invoking the meet and confer resolution process.

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

Consultant: Calpine Energy Solutions
Attn: Legal Dept.

31249.00001\31836293.2

11

401 West A Street, Suite 500
San Diego, CA 92101
(619) 684-8251 phone
(619) 684-8350 fax

SDCP:

Such notice shall be deemed made when personally delivered or delivered by nationally recognized courier that renders a receipt for delivery.

3.6.4 Ownership of Materials and Confidentiality.

3.6.4.1 Intellectual Property.

Consultant owns all rights in and to any of the following work product (including electronic equivalents) without restriction or limitation upon their use, and immediately when and as created by Consultant or any other person engaged directly or indirectly by Consultant to perform Consultant's services pursuant to this Agreement including: reports, data (excluding SDCP Data), software, models, templates or other materials developed or discovered (collectively "Work Product").

Consultant shall be deemed to be the author of the Work Product for purposes of copyright, trademark and patent. Consultant hereby assigns to the SDCP a perpetual license to use the reports generated by Consultant for the SDCP.

As between the Parties, SDCP owns all right, title and interest in and to all SDCP Data. Upon the expiration of this Agreement, or in the event of termination, SDCP Data, in whatever form and in any state of completion, shall remain the property of SDCP and shall be promptly returned to SDCP. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law. Notwithstanding the foregoing, SDCP recognizes that some residual copies of all or part of SDCP Data may reside on Consultant's servers coincident to system backups ("Residual Backups"), and the existence of same shall not be deemed to violate this Agreement, provided that (i) Consultant does not utilize such copies for its own economic benefit in the marketplace and (ii) Consultant maintains the confidentiality thereof in accordance with applicable laws.

"SDCP Data" refers to all data and information provided, collected, or produced on SDCP's behalf in connection with the services provided under this Agreement; including, but not limited to, confidential personally identifiable information or utility customer data protected under state privacy laws, billing data, usage data, SQMD, enrollment information, contact

history, and any other confidential or proprietary information that relates to current, prospective, or former SJCE customers.

For the avoidance of doubt, Consultant's intellectual property, including, but not limited to, Consultant's internal systems, know-how, programs and work product shall remain the exclusive property of Consultant, and, with regard to any reports specifically for SDCP, SDCP shall have a perpetual, non-exclusive, royalty free (exclusive of payments made under this Agreement) license to use any such reports on an "as is" basis thereafter.

3.6.4.2 Confidentiality. The Parties acknowledge that certain information and materials exchanged during the term of this Agreement, including this Agreement, may contain proprietary and Confidential Information of the disclosing Party. “**Confidential Information**” means and includes any and all information including, without limitation, trade secrets, analyses, compilations, forecasts, studies, techniques, plans, designs, cost data, pricing data, financial data, customer information, SDCP data, total load data, Consultant proprietary information, and employee information, disclosed by a Party to the other Party before, on, or after the Effective Date which relates in any manner, directly or indirectly, to the disclosing Party and/or its business, whether such information is disclosed in writing, verbally, electronically, or otherwise. Confidential Information must be kept confidential and handled in accordance with this Agreement and applicable state and federal law. Such materials shall not, without the prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

Consultant acknowledges that it will have access to information about SDCP’s customers that could give it or a third party an unfair competitive advantage in the event that Consultant or any third party were to compete with SDCP in the provision of electrical or other services to SDCP’s customers. CONSULTANT AGREES THAT IT WILL NOT ACCESS AND/OR USE ANY INFORMATION IT RECEIVES REGARDING SDCP CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT. Consultant agrees not to use any of SDCP Data provided to it by SDCP for its own marketing purposes. Consultant shall not access and/or use such customer information to compete with SDCP in any manner. Upon termination of this Agreement, Consultant shall (i) return all documents and other materials received from the SDCP and all copies (if any) of such

documents and tangible materials, (ii) destroy all other documents or materials in Consultant's possession that contain SDCP customer data, and (iii) deliver to SDCP a certificate, signed by an authorized representative of Consultant, stating that Consultant has returned or destroyed all such documents and materials; provided, however, that Consultant may retain copies of information necessary for tax, billing or other financial purposes, to be used solely for such purposes **Notwithstanding anything in the foregoing to the contrary, however**, Consultant is not prohibited from conducting its business with potential customers in SDCP's territory, either due to a business opportunity already known to Consultant as of the date of this Agreement, or made known to Consultant, other than SDCP, in the ordinary course of Consultant. For the avoidance of doubt, any information, including but not limited to customer names, usage, data, etc., that Consultant knows of, learns of or is provided to Consultant by a third party in the ordinary course of Consultant's business other than performance of the Services under this Agreement shall not be deemed to be confidential information for purposes of this Agreement, even if it is the same or similar information such as would be confidential information, if provided to Consultant pursuant to this Agreement.

3.6.4.2.1 Notwithstanding anything in the foregoing to the contrary, Consultant recognizes and understands that SDCP is governed by the California Public Records Act, and that SDCP may be required to release information provided by consultant, including, without limitation, information marked confidential by Consultant, as required by law. For the avoidance of doubt, Confidential Information shall specifically include, but not be limited to (i) any information disclosed in written form and clearly marked "Confidential" and (ii) information which would reasonably be considered proprietary, trade secret, and confidential. The receiving Party agrees that such Confidential Information shall be held confidential, to the extent permitted by law, under the same safeguards as it treats its own confidential information and that it will not use, copy or disclose the Confidential Information other than for the sole purpose of supporting or performing the services in connection with this Agreement. The Confidential Information may be disclosed to officers, directors, employees, agents, representatives or consultants (who shall agree to be bound by the terms of this Section) of the receiving Party on a need to know basis, and shall not be disclosed to any third party without first having obtained the written permission of the disclosing Party. Confidential Information shall specifically exclude any information which the receiving Party can show (i) was known to or was independently developed by the receiving Party without access to or use of the Confidential Information of the disclosing Party; (ii) was disclosed to the receiving Party in good faith by a third party who had the right to make such disclosure; (iii) was made public by the disclosing Party, or was established to be part of the public domain other than as a consequence of a breach of the Agreement by the receiving Party; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information as shown by documents and other competent evidence in the receiving Party's possession.

As required by subpoena, the California Public Records Act, or other legal or regulatory law/process, the Parties may be required to disclose Confidential Information. Compliance with a
31249.00001\31836293.2

subpoena, request under the California Public Records Act, or other legal or regulatory process shall not constitute a breach of this Agreement. If either Party is required to disclose any Confidential Information, the disclosing Party shall notify the other Party in writing as promptly as feasible so that the other Party may, if it so chooses and at its own expense, challenge the disclosure or seek a protective order. The Party challenging the disclosure or seeking a protective order shall be responsible for any costs or attorneys' fees awarded to a prevailing litigant seeking the records in the event that a court awards such costs or fees against the Party maintaining the records. However, disclosure pursuant to a legal requirement shall not constitute a breach of this section.

3.6.4.2.2 Notwithstanding anything in the foregoing to the contrary, however, Consultant is not prohibited from conducting its business with potential customers in SDCP's territory, either due to a business opportunity already known to Consultant as of the date of this Agreement or made known to Consultant in the ordinary course of Consultant's business other than Services under this Agreement. For the avoidance of doubt, any information, including but not limited to customer names, usage, data, etc., that Consultant receives from a third party in the ordinary course of Consultant's business other than performance of the Services under this Agreement, shall not be deemed to be confidential information as between SDCP and Consultant, for purposes of this Agreement, even if it is the same or similar information such as would be confidential information pursuant to this Agreement.

3.6.4.2.3 The Parties agree that money damages would be an inadequate remedy for breach of the provisions in this Section 3.5.3.3 and that either Party shall be entitled to seek equitable relief in connection therewith and shall be entitled to recover any damages for such breach as may be provided by law.

3.6.4.2.4 Exclusion for CCA Program customer account, usage and billing information. SDCP retains sole ownership of, and full access to (as reasonably requested from Consultant), account, usage and billing information for customers of the CCA Program. SDCP may share all such data with its Supplier or other parties and will assume full responsibility for compliance with customer data protection requirements in doing so. At the termination of this Agreement, Consultant shall provide to SDCP all such information and data requested by SDCP in an electronic format as kept in the ordinary course of business, and as reasonably agreed to by the Parties.

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

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

3.6.7 Indemnification. Consultant (including its officials, officers, employees, agents, sub-consultants and contractors, collectively the “**Indemnifying Party**”) shall, to the extent of its own negligence or willful misconduct only, defend, indemnify and hold SDCP, its officials, officers, consultants, employees, and volunteers (“**Indemnified Party**”) free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident, arising out of or in connection with the performance of the Services, the Project or this Agreement, including reasonable attorney’s fees and other related costs and expenses. Consultant’s obligation to indemnify shall not be restricted to insurance proceeds, if any, received by SDCP, its directors, officials, officers, consultants, employees, agents or volunteers. Consultant’s indemnification obligations herein are conditioned upon the Indemnified Party: (i) promptly notifying the Consultant of any claim in writing; (ii) cooperating with Consultant in the defense of the claim. The Indemnified Party shall have the right to select its legal counsel, at the Indemnifying Party’s expense, subject to the Indemnifying Party’s approval of such counsel, litigation plan, staffing and litigation budget, which shall not be unreasonably withheld conditioned or delayed.

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

3.6.9 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be governed by a court of competent jurisdiction in Riverside County.

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

3.6.11 SDCP’s Right to Employ Other Consultants. SDCP reserves right to employ other consultants in connection with this Project. Provided, however, that such other Consultant shall not perform substantially the same or similar Services.

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

3.6.13 Assignment or Transfer. Neither Party shall assign this agreement, or any of its rights or delegate any of its responsibilities hereunder without first obtaining the consent of the other Party, except it may be assigned or transferred without consent (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets of the transferring Party, whether by merger or acquisition, or (ii) by either Party to any wholly-owned affiliate, provided however, that in the event of such a non-consent transfer, commercially reasonable efforts shall be made to give notice to the other Party prior to the transfer to the successor in interest. Any

request for consent to assign shall be made in writing and the consent, if any, shall be made in writing. Any transfer in violation of this provision shall be void.

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

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

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

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

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

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

3.6.20 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to

initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

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

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

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

3.7 Subcontracting.

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

4. LIMITATION ON DAMAGES. FOR ANY BREACH HEREOF, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY, INCLUDING ANY CLAIMS FOR MONETARY PENALTIES ASSESSED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ASSOCIATED WITH THE SETTLEMENT QUALITY METER DATA REPORTING OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. 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. THE FOREGOING

LIMITATIONS SHALL NOT APPLY TO ANY CLAIM ARISING FROM A BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 3.6.4.2. IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT EXCEED FIFTEEN MILLION DOLLARS AND NO CENTS (US \$15,000,000.00). THIS ARTICLE 4 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

5. REMEDIES FOR FAILURE TO MEET CERTAIN PERFORMANCE STANDARDS

The Parties acknowledge that Consultant's failure to achieve substantial compliance with the performance standards and reporting thereon as specified in Exhibit A, Section 2(c)(i), 2(d), 2(e), 2(f), and 2(h), may cause SDCP to incur substantial economic damages and losses of types and in amounts which are difficult impossible to compute and ascertain with certainty as a basis for recovery by SDCP of actual damages, including, but not limited to, increased customer opt-out rates, reputational harm and customer dissatisfaction, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages, Consultant agrees that liquidated damages may be assessed and recovered by SDCP against Consultant, in the event of a failure to substantially meet these performance standards. For any month in which SDCP believes Consultant has failed to substantially meet these performance standards, SDCP will provide notification to Consultant within 180 calendar days describing the performance standard(s) that have not been met, and Parties shall then confer within ten (10) days to establish a plan to remedy such failure. In the event Consultant is unable to achieve such remedy within 30 calendar days of notification, Consultant shall be liable to SDCP for payment of liquidated damages in an amount of ten percent (10%) of the amount of the fees paid to Consultant under the Agreement for the first month that Consultant fails to substantially meet these performance standards and twenty-five percent (25%) for each subsequent consecutive month that these performance standards are not met. The foregoing liquidated damages payment shall be limited to the above amount regardless of how many performance standards are not met in any given month. The liquidated damages payment shall not apply to any performance standard that is of a subjective nature. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Consultant shall pay them to SDCP without limiting SDCP's right to terminate this agreement for default as provided elsewhere herein.

5.1 FORCE MAJEURE EVENT. A Party shall be excused from performance under this Agreement and shall not be considered in default with respect to any obligation hereunder (other than obligations to pay money), if, and to the extent, its failure of, or delay in, performance is due to a Force Majeure Event; provided, however, that (a) such claiming Party gives written notice and full particulars of such Force Majeure Event to the other Party promptly after the occurrence of the event relied on, (b) such notice shall estimate the expected duration and probable impact on the performance of such Party's obligations hereunder, (c) such affected

Party shall continue to furnish timely regular reports with respect thereto during the continuation of the delay in the affected Party's performance, (d) the suspension of such obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure Event, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence; (f) the affected Party shall exercise all commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the other Party by promptly taking appropriate and sufficient corrective action; (g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall give the other Party written notice to that effect, and (h) the affected Party promptly shall resume performance under this Agreement. The term "Force Majeure Event" means the occurrence of any event beyond the reasonable control of the Party affected that results in the failure or delay by such Party of some performance under this Agreement, in full or part, including but not limited to the following: drought, flood, earthquake, storm, fire, volcanic eruption, lightning, epidemic/pandemic, war, pests, riot, civil disturbance, sabotage, terrorism or threat of terrorism, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a governmental authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include strike or labor difficulty, lack of financial resources, material cost increases in commodities or labor, or other economic conditions.

5.2 COMPLIANCE WITH LAW. Each Party shall be responsible for compliance with all laws or regulations applicable to the Services being provided under this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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

SAN DIEGO COMMUNITY POWER,
a California joint powers agency

CALPINE ENERGY SOLUTIONS, LLC

By: _____
Cody Hooven
Interim Executive Director

By: _____
Title: _____

APPROVED AS TO FORM:

ATTEST:

By: _____
General Counsel
Best Best & Krieger LLP

By: _____
Its: _____

* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

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

EXHIBIT A

SCOPE OF SERVICES/COMPENSATION

SCOPE OF SERVICES

1. **Term.** The services to be provided under this Addendum will commence upon execution of the Agreement. The delivery date for power (“**Power Start Date**”) is expected to be as early as January 2021 or a date mutually agreed to by the Parties. Consultant will provide all services on a time schedule as necessary to meet the Power Start Date.
2. **Description of Data Manager Services.** In accordance with the timing of the Power Start Date set out above, Consultant shall provide the Data Manager Services listed below.
 - (a) Electronic Data Exchange Services:
 1. Process CCA Service Requests (CCASRs) from/to SDG&E which specify the changes to a customer’s choice of services such as enrollment in CCA programs, customer initiated returns to bundled utility service or customer initiated returns to direct access services (814 Electronic Data Interchange Files).
 2. Obtain all customer usage data from SDG&E’s Metered Data Management Agent (MDMA) server to allow for timely billing (according to SDG&E requirements) of each customer (867 Electronic Data Interchange Files).
 3. Maintain and communicate the amount to be billed by SDG&E for services provided by SDCP (810 Electronic Data Interchange Files).
 4. Receive and maintain all data related to payment transactions toward CCA charges from SDG&E after payment is received by SDG&E from customers (820 Electronic Data Interchange Files).
 5. Process CCASRs with SDG&E when customer status changes.
 6. Contractor shall participate in the Customer Data Acquisition Program (CDA) beta testing for Smart Meter data sharing as SDCP’s Data Manager.
 - (b) Qualified Reporting Entity (QRE) Services:
 1. Consistent with terms and conditions included in the Qualified Reporting Entity Services Agreement(s) between SDCP and Contractor, serve as QRE for certain locally situated, small-scale generators or other distributed energy resources supplying electric energy to SDCP through a feed-in tariff (FIT) or other mechanism.
 2. Submit a monthly generation extract file to Western Renewable Generation Information System (WREGIS) on SDCP’s behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
 3. Contractor shall receive applicable electric meter data from SDG&E for SDCP distributed energy resource projects, consistent with SDG&E’s applicable meter servicing agreement, and shall provide such data to SDCP for purposes of performance tracking and invoice creation.

Exhibit A-1

(c) Customer information System:

1. Maintain an accurate database of all eligible accounts who are located in the SDCP service area and identify each account's enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer SDCP as mutually agreed by parties from time to time.
 - i. Allow SDCP to have functional access to a Customer Relationship Management (CRM) application to add customer interactions and other account notes.
 - ii. Allow SDCP to view customer email or written letter correspondence within online database.
 - iii. Maintain and provide as-needed historical usage data on all customers from a time period equal to the lesser of either (a) the start of customer service to present or (b) five years. Maintain viewing access, available to appropriate SDCP staff, to view SDG&E bills for SDCP customers made available by SDG&E, including supporting the intuitive parsing and labeling of SDG&E provided files. Maintain accessible archive of billing records for all SDCP customers from the start of SDCP service or a period of no less than five years.
 - iv. Maintain and communicate as needed record of customers who have been offered service with SDCP but have elected to opt out, either before or after starting service with SDCP.
 - v. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled as per SDCP's Net Energy Metering policy, once developed.
 - vi. When requested by SDCP, place program charges on the relevant customer account, referenced by its unique identifier.
 - vii. Identify customers participating in various SDCP programs in database.
 - viii. Include various program payment information in all relevant reports.
 - ix. Perform quarterly SDCP program reviews to assess appropriate customer charge level.
 - x. Maintain all customer data according to SDCP's customer privacy policy, once developed, and the requirements of relevant California Public Utilities Commission decisions including D.12-08-045, including a daily backup process.
 - xi. Maintain a Data Management Provider Security Breach Policy.

(d) Customer Call Center:

1. Provide professional Interactive Voice Response (IVR) recordings for CCA customer call center.

- i. In the event third party services are required to translate prompts or scripts into languages specified by SDCP, any charges incurred by Contractor as a result of these will be passed by Contractor onto SDCP.
2. Provide option for IVR self-service and track how many customer start and complete self-service options without live-agent assistance.
3. Staff a call center between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding SDG&E, SDCP & Contractor holidays.
 - i. No less than 2 client service representatives will be dedicated to SDCP unless both Parties mutually agree to adjust staffing levels after reviewing call volumes and related call center statistics.
 - ii. At SDCP's written request, and subject to prices set to be negotiated between Parties and with three (3) months' notice prior to taking effect, staff a call center between the hours of 8 AM PPT and 8 PM PPT, Monday through Friday, excluding SDG&E, SDCP and Contractor holidays.
4. Provide sufficient number of Contractor staff available to manage escalated calls between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding SDG&E, SDCP and Contractor holidays.
5. Contractor will adhere to the following performance standards during Non-Enrollment Periods:
 - i. Ensure that a minimum of 80% of all calls will be answered within 45 seconds.
 - ii. Ensure that a minimum of 90% of all calls will be answered within 3 minutes.
 - iii. Achieve a no greater than 5% abandon rate for all calls.
 - iv. 100% of voicemail messages answered within one (1) Business Day and provide report to SDCP upon request that substantiates this requirement has been met.
 - v. 100% of emails receive an immediate automated acknowledgement and provide report upon request to SDCP that substantiates this requirement has been met.
 - vi. 95% of emails receive a customized response within one (1) Business Day and provide report to SDCP upon request that substantiates this requirement has been met.
 - vii. 100% of emails receive a customized response within three (3) Business Days and provide report to SDCP upon request that substantiates this requirement has been met.
6. Contractor will adhere to the following performance standards during Statutory Enrollment Periods:
 - i. Ensure that a minimum of 75% of all calls will be answered within 60 seconds.

Exhibit A-3

- ii. 100% of voicemail messages answered within one (1) Business Day and provide report to SDCP upon request that substantiates this requirement has been met.
 - iii. 100% of emails receive an immediate automated acknowledgement and provide report upon request to SDCP that substantiates this requirement has been met.
 - iv. 95% of emails receive a customized response within one (1) Business Day and provide report to SDCP upon request that substantiates this requirement has been met.
 - v. 100% of emails receive a customized response within three (3) Business Days and provide report to SDCP upon request that substantiates this requirement has been met.
 - vi. Achieve a no greater than 10% abandon rate for all calls.
7. Provide sufficient call center staffing to meet the requirements set forth herein.
8. Provide callers with the estimated hold time, if applicable. Provide an automated 'call back' option for callers who will be put on hold for an estimated five minutes or longer.
9. Record all inbound calls and make recordings available to SDCP staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
10. Track call center contact quality with criteria including:
 - i. Use of appropriate greetings and other call center scripts
 - ii. Courtesy and professionalism
 - iii. Capturing key customer data
 - iv. Providing customers with correct and relevant information
 - v. First-contact resolution
 - vi. Accuracy in data entry and call coding
 - vii. Grammar and spelling in written communications (email and chat)
11. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.
12. Response to customer emails.
13. Receive calls from SDCP customers referred to Contractor by SDG&E and receive calls from SDCP customers choosing to contact Contractor directly without referral from SDG&E.
14. Provide the call center number on SDG&E invoice allowing SDCP customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.
15. Collect permission (via voice recording, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.

16. Response to telephone inquiries from SDCP customer using a script developed and updated quarterly by SDCP. For questions not addressed within the script, refer inquiries either back to SDG&E or to SDCP.
17. Response to customer inquiries received through telephone calls, email, fax and/or web-portal within the times and guidelines in this RFP and the Agreement.
18. Upon request, coordinate with SDG&E and other SDG&E territory CCAs to participate in call center reviews up to twice per calendar year.
19. Ensure monthly statistics reports are provided in a timely and consistent manner as mutually agreed upon by Parties.
20. Provide recurring statistics reports focused on Call Center activities in a timely and consistent manner as mutually agreed upon by Parties.
21. Use commercially reasonable efforts to make Spanish speaking call center staff available to customers during Regular Business Hours.
22. Provide translation services for inbound calls for the following languages:
 - i. Spanish, Tagalog, Cantonese, Mandarin, and Vietnamese.
23. Create and maintain online forms for the SDCP website so the customers may perform opt-up, opt-down, or opt-out selections from the SDCP website. These program changes will be integrated into the CRM system on a daily basis.
24. Participate in periodic meetings with SDCP to review operations on a schedule mutually agreed upon by Parties.

(e) Billing Administration:

1. Review application of SDCP Rate Schedules to SDG&E accounts to ensure that the proper rates are applied to the accounts.
2. Review application of SDCP Rate Schedules to SDG&E accounts to ensure that the proper rates are applied to the accounts.
3. Timely submit billing information for each customer to SDG&E to meet SDG&E's billing window.
4. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.
5. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.
6. Provide customer mailing list to SDCP designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
7. Provide customer mailing list to SDCP designated printer for customers with overdue payments and return customers to SDG&E bundled service in accordance with SDCP's late payment and collections policies.
8. Send certain SDCP program charges for non-SDCP customers, when supported by SDG&E, based on information provided to Contractor by SDCP.

9. Send certain SDCP program charges as a separate line item to SDG&E for placement on monthly bill during term of repayment.
 10. Contractor will adhere to the following performance standards for this service:
 - i. 99% of SDCP charges sent to SDG&E will be free of Contractor error and within SDG&E Billing Window, on a rolling 12-month basis (current month and preceding 11 months).
- (f) Rate Schedule Maintenance:
1. Maintain a table of Rate Schedules, offered by SDCP to its customers, within Contractor's billing system.
 - i. Complete Value Only Rate Changes within 10 Business Days once Contractor has confirmed it is in receipt of a valid Rate Template.
 - ii. Complete Structural Rate Changes within 40 Business Days once Contractor has confirmed it is in receipt of a valid Rate Template.
 - iii. A Rate Template will be considered valid if it meets the expected formatting requirements as set forth by Contractor and acknowledged by SDCP, and the Rate Schedules it contains align with published SDCP tariffs. Upon receipt of a Rate Template, Contractor will review it per these guidelines and after SDCP has corrected any errors, if present, Contractor will communicate to SDCP that a valid Rate Template has been received and work will commence as per the timelines indicated above.
 - iv. Should SDCP submit updates after Contractor has begun work on a valid Rate Template, SDCP understands this may be considered a new Rate Change.
 2. Conduct no more than three Value Only Rate Changes within Contractor's billing system at no additional cost to SDCP within each calendar year.
 3. Conduct no more than one Structural Rate Change within Contractor's billing system at no additional cost to SDCP within each calendar year.
 4. At SDCP's direction and for the corresponding price set to be negotiated between Parties, conduct additional Value Only or Structural Rate Changes beyond those included as noted above.

(g) Reporting:

Report	Frequency	Delivery Method
Aging	Weekly, Monthly	SFTP
Call Center Stats	Weekly, Monthly	Email
Cash Receipts	Weekly, Monthly	SFTP
SDCP Invoice Summary Reports	Monthly	SFTP
Days To Invoice	Weekly, Monthly	SFTP
Program Opt Up with Address	Weekly, Monthly	SFTP

Exhibit A-6

Utility User Tax (UUT) where applicable	Monthly	Email
Invoice Summary Report	Weekly, Monthly	SFTP
Invoice Summary Report – Mid Month	Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt Out with Rate Class	Weekly, Monthly	SFTP
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	Email
Snapshot	Weekly	SFTP
Snapshot with Addresses	Weekly	SFTP
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP
Performance Standards	Monthly	Email

(h) Settlement Quality Meter Data:

1. Contractor shall provide SDCP or SDCP’s designated Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required from SC’s by the California Independent System Operator (CAISO).
2. Upon SDCP’s request, Contractor shall submit the SQMD directly to the CAISO on behalf of SDCP or SDCP’s designated SC.
3. Contractor will use, when available, interval usage data as provided by SDG&E through its MDMA services in its SQMD aggregation methodology.

(i) Data Tools:

1. Establish a data warehouse environment comprised of data related to the services provided by Contractor under the contract.
2. Provide access for SDCP staff to query the data warehouse environment.
3. Provide access for other organizations under contract with SDCP to query the data warehouse environment, if a business need is determined by SDCP to ensure seamless communication of data across SDCP operations, provided proper confidentiality and data security policies are mutually agreed upon by the Parties prior to such access being provided.
4. Data made available in the data warehouse shall include:
 - i. AMI usage data provided by SDG&E through their Green Button platform
 1. Prior to loading this data into the data warehouse, Contractor will make commercially reasonable efforts to process the raw Green Button data and associate usage data with customer accounts in Contractor’s CIS.

2. Contractor will query SDG&E systems for updated usage data and make reasonable efforts to update the data warehouse on a daily basis.
 3. Contractor and SDCP will establish mutually-agreed service level metrics and protocols for daily processing and loading of SMD data.
 - ii. Customer account information and characteristics from the customer list provided by SDG&E and supplemented by the following data from CRM and CIS:
 1. SDCP participation history
 2. Product elections
 3. Opt-out activity
 4. SDCP rate schedule
 5. Contractor will make reasonable efforts to provide additional characteristics requested by SDCP
 - iii. Billing data from Contractor's CIS
 - iv. SQMD submission data
 5. Contractor may, from time to time and at its sole discretion, update the functionality available in the data warehouse which may include, among others, adding or maintaining data visualizations, self-service reporting tools, self-service analytical tools, and Application Program Interface (API) points.
 6. Contractor may, at its sole discretion, engage with SDCP and other Contractor clients to elicit their input on required functionality, data elements, and system design as it pertains to the development, maintenance, and evolution of its data environment.
 7. In the absence of the data warehouse or adequate data within the data warehouse for SDCP to Self Service, Contractor shall assist SDCP in compiling Ad Hoc sales, customer, and usage reports from time to time as may be requested by SDCP, with each such request being accompanied by mutually agreed upon requirements and proper notice.
 8. Contractor will provide technical support to access the data warehouse and documentation describing the data. SDCP will provide staff with technical database expertise to engage with Contractor in the implementation and use of the data warehouse.
 9. Contractor will ensure timely data sharing with SDCP's other vendors, pursuant to mutually agreed upon schedules, methods, formats, and confidentiality and data security policies.
 10. Data warehouse environment availability expected by end of Q1 2021.
- (j) Value Added Services:

1. Develop and implement an online bill comparison tool for that performs a comparison of total bill charges for established SDCP rates, in accordance with the following:
 - i. The online bill comparison tool will capture input from the user for certain information from the SDG&E bill to be compared including usage, rate and other required data.
 - ii. The online tool will then perform and display the comparison between SDCP and SDG&E charges for the selected month, based on user inputs, SDG&E tariff rates and SDCP generation tariff rates.
 - iii. The online tool will be made available as an interactive web page for SDCP to publish via its website. Contractor will make reasonable efforts to incorporate SDCP's branding specifications in collaboration with SDCP.
 - iv. The online bill comparison tool will not support complex rates, including NEM rates and demand response program, or rates constituting less than 1% of SDCP's customer accounts.
 - v. Initial deployment of the online bill comparison tool will be in accordance with SDCP's mass enrollment phases, with rates being implemented in the tool based on which enrollment phase participating customers are in.
 - vi. Contractor will require one month lead time for initial deployment of the online bill comparison tool following receipt and validation of the SDCP generation tariff rates.
 - vii. Contractor will require one month lead time to update the tool with new rates that have not been implemented in the tool previously following receipt and validation of those new SDCP generation tariff rates.
 - viii. Contractor may require up to two month lead time to update the tool with new or updated rate structures that have not been implemented in the tool previously following receipt and validation of those new SDCP generation tariff rates.

2. Develop and implement an internal bill comparison tool to enable SDCP staff to generate bill comparison reports on a self-service basis, in accordance with the following:
 - i. The internal bill comparison tool will incorporate 12 months of historical interval data as provided by SDG&E to perform TOU-specific analysis for selected customers and account numbers.

- ii. The internal tool will then perform and display the comparisons between SDCP and SDG&E charges by month over a 12-month period, based on the interval data, SDG&E tariff rates and SDCP generation tariff rates.
- iii. The internal tool will be made available through a self-service user interface, enabling SDCP staff to generate and export comparisons for user-selected customers and account numbers.
- iv. The internal bill comparison tool will not support complex rates, including NEM rates and demand response programs, or rates constituting less than 1% of SDCP's customer accounts.
- v. Initial deployment of the online bill comparison tool will be in accordance with SDCP's mass enrollment phases, with rates being implemented in the tool based on which enrollment phase participating customers are in.
- vi. Contractor will require at least three month lead time to deploy the internal bill comparison tool following receipt of the 12-month historical data and SDCP generation tariff rates.
- vii. Contractor may required up to a three month lead time to update the tool with new rates that have not been implemented in the tool previously following receipt and validation of those new SDCP generation tariff rates.
- viii. Contractor may require up to a three month lead time to update the tool with new or updated rate structures that have not been implemented in the tool previously following receipt and validation of those new SDCP generation tariff rates.

Additional customization may be performed upon mutual agreement by Parties.

3. Clean Energy Incubator

Contractor will develop and launch a multi-year "Clean Energy Incubator" in the San Diego region in partnership with the Local Government Commission (LGC). This program will build the engagement and capacity of San Diego Community Power board members, staff, local member agencies, CSR representatives, and other stakeholders to address emerging energy issues through educational forums and direct support.

The Incubator will, at a minimum, implement the following services:

- Quarterly in person seminars (with a recorded webinar option) with experts covering a range of energy and climate topics, to be determined in partnership with Calpine and SDCP staff
- Clean Energy Online Education Center - A dedicated website where CPA Board members, CPA staff, member agency staff and other stakeholders could

access information on emerging energy issues, local projects, best practices, funding, and technical assistance resources available throughout the region. Recordings of quarterly forum presentations will also be made available on the website.

- Technical Assistance - Assistance will be offered for local jurisdictions interested in pursuing clean power programs or projects, including but not limited to those covered within the seminars and the online education center. LGC staff will provide individualized assistance to help local jurisdictions design energy initiatives and identify funding, tools and other resources. This service will be available to all member agencies over the course of the contract and will consist of the following:
 - o Opportunity Assessment: LGC staff will work with local jurisdictions to assess community needs and project goals through an assessment form and conference call, help with project scoping, and make initial recommended next steps.
 - o Customized Local Reports and Assistance: LGC will then provide recommendations on initial steps for the jurisdiction to take while developing a more comprehensive, customized recommendations report matching funding sources, opportunity areas, models, templates, and additional technical assistance with the jurisdiction's specific initiative to further program implementation.
 - o Follow-Up and Ongoing Engagement: Based on the needs and outcomes from the report and initial assessment, LGC staff will schedule time for a follow-up call to walk the local jurisdiction through the recommendations report, explain the results, answer any questions, and identify next steps for the local jurisdiction to act on the report. LGC will also play a more active role in providing iterative technical assistance, as requested, such as supporting grant writing efforts

4. See Change Institute Communications Plan & Study

Contractor will work with See Change Institute (SCI) and SDCP staff to leverage behavioral science insights and customer research to design the communications plan for the San Diego CCA roll-out. Our research approach consists of four phases: (1) DISCOVER goals and opportunities, (2) DEFINE the target audience and behaviors, (3) DESIGN and test messaging content and strategy, and (4) DEPLOY and evaluate for continuous learning.

- Phase 1: Discover

Exhibit A-11

- Timeline: Q2 2020 through Q4 2020
- This phase will include a landscape analysis, a stakeholder analysis and a planning workshop
- Phase 2: Define
 - Timeline: Q3 2020 through Q1 2021
 - This phase will include customer surveys, listening sessions and planning workshop #2
- Phase 3: Design
 - Timeline: Q1 2021 through Q2 2021
 - This phase will include message design, message testing, and planning workshop #3
- Phase 4: Deploy
 - Timeline: Q1 2020 through Q4 2021
 - This phase will include Evaluation design, planning workshop #4 and a final report

The timelines associated with all of these activities are based on SDCPs implementation plan and customer phases. Should SDCP change its implementation phases, the timeline for this effort will be affected and may need to adjust.

5. Community Outreach & Engagement Support

Contractor will work with Cleantech San Diego and the San Diego Urban Sustainability Coalition to provide community outreach and engagement support under the following scopes

- Urban Sustainability Coalition:

In coordination with the See Change Institute and Cleantech San Diego and under the leadership of SDCP, SDUSC will engage, educate and organize communities in SDCP's territory during the Phase 3 pre-enrollment period through the end of the post-enrollment notification period. This work effort will focus on both attending community events throughout SDCP's territory on a monthly basis, as well as hosting curated educational workshops. SDUSC will be providing the following services as part of this effort:

- Conduct up to twenty community listening sessions focused on community choice spread through SDCP's territory. These sessions will focus on engaging and educating community leaders, gather data on community priorities and support the SCI project.

- Participate in up to ten community events per month leading up to launch and up to two months after.
- Facilitate up to twenty CCA educational community workshops in public spaces during mass enrollment.

Additionally, SDUSC will act as a stakeholder in support of the development of the customer contact center. SDUSC will help connect Calpine and SDCP with community stakeholders and advise on services that will help connect the contact center with the community and create local jobs.

- **Cleantech San Diego (CTSD)**

Under the guidance of SDCP staff and coordinated with See Change Institute, Calpine and SDUSC, Cleantech San Diego will engage the business community on the efforts of San Diego Community Power and to create on-going forum's for engagement. These convenings will provide an opportunity for businesses within SDCP's service territory to engage with SDCP leadership on a variety of issues including cost of services, program design and implementation, and opportunities for collaboration. To support this, Cleantech San Diego will do the following:

- **Quarterly Business Roundtables:** On a quarterly basis, CTSD will host roundtables with business leaders throughout SDCP's service territory. These roundtables will serve as a venue for SDCP staff and leadership to meet with business owners to discuss opportunities for collaboration, disseminate program information and solicit feedback from the business community. CTSD will leverage its relationships with organizations like the San Diego Regional EDC and the SD Chamber of Commerce to ensure a broad group is represented in these roundtables.
- **Community Education Events:** Once a year, as part of its Education Series, Cleantech San Diego will host a business-focused event on SDCP. The Cleantech San Diego Education Series features subject matter experts and provides a public forum for Cleantech San Diego members and the community to engage in an open dialogue about emerging issues shaping the future of San Diego's cleantech and smart cities sectors.
- **Southern California Energy Innovation Network:** The Southern California Energy Innovation Network (SCEIN), a program led by Cleantech San Diego is a California Energy Commission-funded program to support startups with electric energy-focused

technologies in San Diego, Imperial, Riverside, and San Bernardino counties. On an on-going basis, Cleantech San Diego will introduce entrepreneurs in the program to leadership at SDCP so that they may explore potential opportunities for collaboration, including pilot project opportunities. In addition, should SDCP identify specific challenges it is facing as it relates to energy production or other matters, Cleantech San Diego will facilitate conversations between SDCP and our region’s energy entrepreneurs so that they may explore potential solutions.

6. Community Development Strategic Plan

- i. Contractor will support SDCP with the creation of a Community Development Strategic Plan (CDSP).
- ii. Starting no earlier than two months after the post notification period of SDCPs phase 3 residential enrollment, Contractor and SDCP will work together to develop a mutually agreed upon scope of work and budget, which will be funded by Contractor,
- iii. The RFP frameworks developed by Clean Power Alliance and East Bay Community Energy for their respective local development plans will serve as guidelines for the CDSP with regard to total scope and cost.
- iv. SDCP and contractor will provide the appropriate staff to support development of the CDSP.

3. **Service Fees.**

For the month of the Power Start Date, and each month thereafter, SDCP shall pay Consultant the following fees:

- \$25,000 per month, fixed fee, and;
- \$0.85 per meter per month, for each meter served by SDCP in the month.
- Should SDCP elect to extend call center hours to include 5-8pm, the additional fee per meter per month shall be \$0.04.

Rate Change Pricing: Additional Rate Changes beyond those included in Section 2.F of this Exhibit A will be provided to SDCP per the following price schedule

Rate Change Type	Number of Billing Determinants Affected
------------------	---

	Up to 50	51 to 250	251 to 500	501 to 1,000	1,001 to 1,500	1,501 to 3,000	3,001 to 4,500	4,501+	Hourly
Value Only Change	\$1,000	\$2,000	\$3,000	\$5,000	\$7,500	\$10,000	\$ 13,000	\$15,000	
Structural Rate Change	\$1,000	\$2,500	\$5,000	\$7,500	\$10,000	\$15,000	\$ 20,000	\$30,000	
Custom Rates (2 hours included of preliminary consultation)									\$150 / hr

4. Bonds.

At SDCP’s direction, Consultant will post a \$100,000 bond to the California Public Utility Commission, or cash equivalent, on behalf of SDCP, as part of the CCA Services initiation. SDCP will repay such bond or cash within 90 days following the Power Start Date with an interest accrual of 1-month Libor plus two percent (2%) per annum.

5. Waiver of Service Fees

Consultant will waive the first two million dollars (\$2,000,000) of service fees after the Power Start Date in the form of an account credit.

6. Community Give Back

Each year, Consultant will rebate three percent (3%) of its annual service fees to organizations in the San Diego region for the purpose of promoting economic development, workforce development, local project development, grid resiliency, and other areas that support the mission of SDCP and its communities

7. Pricing Assumptions.

The Fees defined in Section 3 include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables provided by Consultant to SDCP shall be passed through directly to SDCP without mark-up. A labor rate of \$150.00 per hour will be utilized for labor costs unless otherwise agreed upon in writing by both parties prior to the commencement of additional work

8. Definitions.

“Ad Hoc Request” or “Ad Hoc” refers to services, including: new services, additional services or significant modifications to current services, requested by SDCP that fall outside the scope of what Contractor is contractually obligated to provide under the terms of this Agreement. In the event of SDCP requesting Ad Hoc services, SDCP shall specify in reasonable detail the nature, business reason and scope of the request and Contractor will use commercially reasonable efforts to deliver

Ad Hoc items to SDCP in a timely manner. Any Ad Hoc Request may be subject to the fee schedule set forth in Section 7 of this Exhibit.

“Billing Determinants” are used in the Rate Schedule to calculate the charge or credit due. Billing Determinants can define a time period, as in the case of Time-Of-Use rates that have various significance periods such as on-peak, off-peak, mid-peak, etc., or can be defined as factors that are to be considered when calculating the final customer charge such as discount services or additional charges that deviate from the Rate Schedule’s standard structure, among others. Billing Determinants are considered unique at a per-Rate Schedule basis, even if more than one Rate Schedule contains Billing Determinants with the same name. For the avoidance of doubt, all Billing Determinants that are applicable to SDCP are listed on the Common Effective Prices report and is updated by Contractor from time to time. Contractor will notify SDCP of any additions/changes to the Billing Determinants.

“**CCA Service**” means SDCP’s Community Choice Aggregation Service which permits cities, counties or a joint powers agency whose governing boards have elected to acquire their electric power needs, hereinafter referred to as Community Choice Aggregation (CCA), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other Commission directives.

“**CCA Service Request (“CCASR”)**” means requests in a form approved by SDG&E to change a CCA Service customer’s, utility customer’s or direct access customer’s choice of services which could include returning a CCA Service customer to bundled utility service or direct access service.

“Customer Relationship Manager” or (“CRM”) refers to an online software platform populated by a database, and designed to manage and analyze customer interactions and data through the customer lifecycle with the goal of improving business relationships with customers, assisting in customer retention and driving customer participation.

“Data Portal” refers to methods of accessing and using customer information through Contractor’s systems, including but not limited to: the CRM system, data extracts, and other reports supported by the data Contractor manages under this Exhibit A

“**Default Usage**” means the average monthly usage value, by rate schedule, used for estimation in the absence of actual historical usage data.

“**Mass Enrollment**” means the automatic enrollment of customers into a CCA Service program where new service is being offered for the first time to a group of eligible customers.

“**Meter Data Management Agent (MDMA) Services**” means reading SDG&E’s customers’ meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to SDG&E standards.

“Non-Enrollment Period” refers to any other period that is not a Statutory Enrollment Period.

“**Prudent Utility Practice**” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of similar generating facilities in the United States during the relevant time period) that, in the exercise of reasonable 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, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, any governmental requirements or guidance, including CAISO, applicable laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Utility Practice shall not

be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“Qualified Reporting Entity” or (“QRE”) refers to an entity authorized by WREGIS to submit meter data associated with renewable energy on behalf of the generator owner using the WREGIS application.

“Rate Schedule refers to the rate buildout or formula that is created to establish a billing methodology for SDCP consistent with published SDCP tariffs, and includes all the necessary Billing Determinants, and the values applied to each, used to calculate charges or credits per unit of electricity consumed (kWh) or per unit of demand (kW).

“Rate Template” refers to a predefined format used to communicate Rate Schedule(s) from SDCP to Contractor. A Rate Template is considered valid once Contractor has reviewed the contents of a Rate Template submitted by SDCP and confirmed it meets the expected formatting requirements and the Rate Schedule(s) contained therein align with published SDCP tariffs.

“SDG&E” is the local Utility Distribution Company.

“Self Service” refers to data that SDCP can reasonably obtain and access through the Data Portal, upon its implementation, or to processes or actions which SDCP can reasonably perform without the assistance of Contractor staff. Should SDCP request data from Contractor that is available via Self Service or request Contractor perform a process or action that BCE can reasonably perform via Self Service, this shall be considered an Ad Hoc Request and is subject to the fees listed in Section 7 of this Exhibit.

“Settlement Quality Meter Data” or (“SQMD”) refers to meter data gathered, edited, validated, and stored in a settlement-ready format, for settlement and auditing purposes.

“**Statutory Enrollment Period**” means three months prior to a Mass Enrollment, the month in which the Mass Enrollment occurs, and two billing cycles following Mass Enrollment. The Statutory Enrollment Period takes place over a six month period.

“Structural Rate Change” refers to a rate change that alters one or more Billing Determinants within a Rate Schedule by changing the definition of the Billing Determinant itself and/or adding and/or removing one or more Billing Determinants to an existing buildout. For the avoidance of doubt, a rate change that impacts multiple Billing Determinants submitted by SDCP through a single Rate Template shall be considered one Structural Rate Change.

“Value Only Rate Change” refers to a rate change that alters only the values applied to each of the Billing Determinants in a given Rate Schedule buildout, keeping the existing buildout intact.

[Remainder of page intentionally left blank]

APPENDIX A

FORM OF CCA IMPLEMENTATION SCHEDULE

Launch Date	<i>Power Start Date</i>		Start	End	
Task No.	Implementation Task	Duration (days)	Days from Launch	Days from Launch	Responsible Party
1	Designated as Calpine with the Utility	7	187	180	CCA
2	Complete and submit required Utility Forms	7	187	180	CCA
3	Infrastructure & Application Configuration	90	150	60	Calpine
4	CRM Install and Configuration	90	180	90	Calpine
5	FAQ Creation and Approval	28	155	127	CCA
6	IVR Scripting Creation and Approval	28	155	127	CCA
7	Website Forms Template Review and Approval	28	155	127	CCA
8	IVR Script Translation	7	127	120	CCA
9	Website iFrames Translation	7	127	120	CCA
10	Website iFrames Design and Construction	42	117	75	Calpine
11	IVR Recordings	10	120	110	CCA
12	Print Vendor Selection	0	90	90	CCA
13	IVR Programming	35	110	75	Calpine
14	Bank Vendor Selection	0	90	90	CCA
15	EDI Certification (Utility and Bank)	42	102	60	Calpine
16	List of phase 1 customers	0	75	75	CCA
17	Print Vendor Collaboration and Testing	14	89	75	Calpine
18	Rate Design and Approval	0	90	90	CCA
19	Contact Center Training	21	88	67	Calpine
20	Program Rates	30	60	30	Calpine
21	1st Opt Out Period	30	60	30	Calpine
22	2nd Opt Out period	30	30	0	Calpine
23	Report Programming	30	30	0	Calpine
24	Utility Account Set Up	14	21	7	Utility
25	Power Flow	0	0	0	
26	Accounts Switch	37	7	+30	Utility/Calpine
27	3rd Opt Out Period	30	0	+30	Calpine
28	1st Full Cycle Bills	30	+30	+60	Calpine
29	4th Opt Out Period	30	+30	+60	Calpine

Exhibit A-18

EXHIBIT B
FORM OF PROMISSORY NOTE

FOR VALUE RECEIVED, the undersigned, SAN DIEGO COMMUNITY POWER (the "Borrower"), hereby unconditionally promises to pay to the order of CALPINE ENERGY SOLUTIONS, LLC ("Calpine") the unpaid principal amount of each Advance (as defined in the Agreement referred to below) made by Calpine to the Borrower on the Maturity Date and on such other dates and in such other amounts as set forth in the Agreement (as defined below). All payments of principal of the outstanding amounts of all Advances evidenced by this Promissory Note shall be made in the manner specified in the Agreement (as defined below).

Borrower hereby further promises to pay interest in like money and funds on the daily outstanding balance of each Advance for the period commencing on the date of each such Advance until repaid in full, at the rate determined pursuant to, and in the manner specified in, the Agreement (as defined below).

All payments of principal of and interest under this Promissory Note shall be made by the Borrower not later than [2:00 pm] (Pacific Standard Time) on the date when due to Calpine at its office located on the date hereof at 401 West A St., Suite 500, San Diego, CA 92101 (or such other address as Calpine may designate in writing to the Borrower) in lawful money of the United States of America, in immediately available funds without setoff, deduction or counterclaim and free and clear of any present or future taxes, levies, imposts, duties, fees, assessments or other charges.

Calpine is authorized to make notations of all Advances made to the Borrower by Calpine pursuant to the Agreement (as defined below) and all repayments of the outstanding principal amounts and accrued interest on such Advances on the schedule attached to and made part of this Promissory Note. Such notations, if made, will be conclusive and binding absent manifest error.

This Promissory Note is the Note referred to in the Professional Services Agreement dated as of March 1, 2020 (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement") between the Borrower and Calpine.

In addition to all principal and accrued interest on this Promissory Note, the Borrower agrees to pay (a) all costs and expenses incurred by all of the holders of this Promissory Note in collecting this Promissory Note, whether through probate, reorganization, bankruptcy or other proceedings and (b) attorney's fees when and if this Promissory Note is placed in the hands of an attorney for collection.

Presentment, demand, protest and notices of any kind with respect to this Promissory Note are hereby expressly waived by the Borrower.

Notwithstanding any other provision of this Promissory Note, in the event that any change in any applicable law or regulation or in the interpretation thereof by any Governmental Authority shall make it unlawful for Calpine to honor its obligation to make, issue or maintain any Advance hereunder, then Calpine shall promptly notify Borrower thereof and Calpine's obligation to make

such Advance, or to continue the Advance, shall be suspended until such time as Calpine may again lawfully make and maintain the Advance and, on the date specified *b1* Calpine in light of legal requirements applicable to Calpine, the Advance shall become payable at a rate per annum established by Calpine in the Agreement.

THIS PROMISSORY NOTE AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS PROMISSORY NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA.

SAN DIEGO COMMUNITY POWER, a
California joint powers agency

By: _____
Cody Hooven
Interim Executive Director

APPROVED AS TO FORM:

By: _____
General Counsel
Best Best & Krieger LLP

CALPINE ENERGY SOLUTIONS, LLC

By: _____

Title: _____

ATTEST:

By: _____

Its: _____

Schedule to Promissory Note
of
SAN DIEGO COMMUNITY
POWER
Dated April 22, 2020

<i>Date of Borrowing</i>	<i>Principal Amount</i>	<i>Interest Rate</i>	<i>Payment Date</i>

SAN DIEGO COMMUNITY POWER
Staff Report – Item 11

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: CCA Registration and Bond Agreement

Date: April 23, 2020

Recommendation

1. Authorize the Interim Executive Director to sign the Community Choice Aggregator (CCA) Service Agreement between SDCP and SDG&E.
2. Authorize River City Bank to post the \$100,000 bond with CPUC.
3. Authorize staff to submit SDCP's CCA Registration Packet to CPUC for approval.

Background

CPUC Resolution E-4907 (February 8, 2018) describes a process of review of Community Choice Aggregation (CCA) Implementation Plans pursuant to the requirements and directives of Public Utilities Code Section 366.21 and Decision (D.) 05-12-041. The process includes a timeline for submission of Implementation Plans; a requirement to “meet and confer” between the CCA and the incumbent utility that can be triggered by either the CCA or the utility; a registration packet including a CCA's service agreement and bond; and a Commission authorized date to begin service.

To register, a CCA must submit its registration packet to CPUC which includes 1) a signed service agreement with the utility and 2) a bond pursuant to Section 394.25 (e). The interim bond amount was set to \$100,000 in Resolution E-4133 (2007). Once a bond has been submitted, Energy Division will issue a registration letter confirming completion of all registration requirements. After a CCA program has fulfilled the above requirements, it may initiate service to its new customers.

Analysis and Discussion

The \$100,000 bond requirement is designed to cover the potential cost of re-enrolling departed customers in bundled utility service if a CCA program fails or otherwise becomes unable to provide service to its customers. River City Bank will post the bond once the banking accounts are established for SDCP.

The CCA Agreement governs the business relationship between the CCA program and the incumbent electrical distribution utility (SDG&E). The form of the CCA Agreement has been developed as part of the CPUC regulatory process to implement Assembly Bill 117. It may not

be waived, altered, amended or modified, except as provided in the agreement or in the applicable community choice aggregation tariff, or as may otherwise be authorized by the CPUC.

Fiscal Impact

\$100,000.

Attachments:

Attachment A: CCA Service Agreement between SDCP and SDG&E.



San Diego Gas & Electric Company
San Diego, California

Revised Cal. P.U.C. Sheet No. 20619-E

Canceling Revised Cal. P.U.C. Sheet No. 20301-E

SAMPLE FORMS

Sheet 1

FORM 124-1000

COMMUNITYCHOICE AGGREGATOR (CCA)
SERVICE AGREEMENT

(05/08)

(See Attached Form)

1C8

Advice Ltr. No. 1989-E

Decision No. 08-04-056

Issued by
Lee Schavrien
Senior Vice President
Regulatory Affairs

Date Filed May 5, 2008

Effective Jun 4, 2008

Resolution No. _____

T



COMMUNITY CHOICE AGGREGATOR (CCA) SERVICE AGREEMENT

This Community Choice Aggregator (CCA) Service Agreement (this “Agreement”) is made and entered into as of this ____ day of _____, _____, by and between “_____” (“CCA”), a _____ organized and existing under the laws of the state of _____, and San Diego Gas and Electric Company (“SDG&E”), a corporation organized and existing under the laws of the state of California. From time to time, CCA and SDG&E shall be individually referred to herein as a “Party” and collectively as the “Parties.”

Section 1: General Description of Agreement

- 1.1 This Agreement is a legally binding contract. The Parties named in this Agreement are bound by the terms set forth herein and otherwise incorporated herein by reference. This Agreement shall govern the business relationship between the Parties hereto, by which CCA shall offer electrical energy services. Each Party, by agreeing to undertake specific activities and responsibilities for or on behalf of customers, acknowledges that each Party shall relieve and discharge the other Party of the responsibility for said activities and responsibilities with respect to those customers. Except where explicitly defined herein (including Attachment A hereto) the definitions controlling this Agreement are contained in SDG&E’s applicable rules or in the relevant community choice aggregation tariff.
- 1.2 The form of this Agreement has been developed as part of the CPUC regulatory process to implement Assembly Bill 117, was intended to conform to CPUC directions, was filed and approved by the CPUC for use between SDG&E and CCAs and may not be waived, altered, amended or modified, except as provided herein or in the applicable community choice aggregation tariff, or as may otherwise be authorized by the CPUC.
- 1.3 This Agreement incorporates by reference the applicable community choice aggregation tariff as authorized and modified from time to time by the CPUC.

Section 2: Representations

- 2.1 Each Party represents that it is and shall remain in compliance with all applicable laws and tariffs, including applicable CPUC requirements.

- 2.2 Each person executing this Agreement for the respective Parties expressly represents and warrants that he or she has authority to bind the entity on whose behalf this Agreement is executed.
- 2.3 Each Party represents that (a) it has the full power and authority to execute and deliver this Agreement and to perform its terms and conditions; (b) the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other action by such Party; and (c) this agreement constitutes such Party's legal, valid and binding obligation, enforceable against such Party in accordance with its terms.
- 2.4 Each Party shall (a) exercise all reasonable care, diligence and good faith in the performance of its duties pursuant to this Agreement; and (b) carry out its duties in accordance with applicable recognized professional standards in accordance with the requirements of this Agreement.

Section 3: Term of Service

The term of this Agreement shall commence on the date of execution by both Parties hereto (the "Effective Date") and shall terminate on the earlier of (a) the date CCA informs SDG&E that it is no longer operating as a CCA in SDG&E's service territory; (b) the earlier termination pursuant to Section 4 hereof; or (c) the effective date of a new CCA Service Agreement between the Parties hereto. Notwithstanding the Effective Date of this Agreement, the CCA acknowledges that it may only offer Community Choice Aggregation Services to customers effective on or after the CPUC-approved date for commencement of such services by CCAs, and only after it has complied with all provisions of this Agreement and SDG&E's applicable tariffs.

Section 4: Events of Default and Remedy for Default

- 4.1 An Event of Default under this Agreement shall include either Party's material breach of any provision of this Agreement, including those incorporated by reference herein, and failure to cure such breach within thirty (30) calendar days after receipt of written notice thereof from the non-defaulting Party; or such other period as may be provided by this Agreement or SDG&E's applicable community choice aggregation tariff.
- 4.2 In the event of such an Event of Default, the non-defaulting Party shall be entitled to exercise any and all remedies (a) available under SDG&E's applicable community choice aggregation tariff; and/or (b) provided for by law or in equity to the extent not inconsistent with SDG&E's community choice aggregation tariff. In addition, in the event of an Event of Default, this Agreement may be effectively terminated upon Commission authorization.

4.3 Breach by any Party hereto of any provision of SDG&E's community choice aggregation tariff, including a breach occurring during Exigent Circumstances as defined in Section T.3 of such tariff, which circumstances also shall include bankruptcy of CCA, shall be governed by applicable provisions contained therein and each Party will retain all rights granted thereunder. A breach of said tariff for which no remedy is specified therein shall be governed by this Agreement as an Event of Default.

Section 5: Billing and Payment

SDG&E will bill and the CCA agrees to pay SDG&E for all services and products provided by SDG&E in accordance with the terms and conditions set forth in SDG&E's community choice aggregation tariff, as stated in SDG&E's Electric Rule 27 and SDG&E's rate schedules. Any services provided by the CCA to SDG&E shall be by separate agreement between the Parties and are not a subject of this Agreement.

Section 6: Limitation of Liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred, except as provided for in this Section. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability, except in the event of an action covered by the Indemnification provisions of Section 7 of this Agreement or by the indemnification provisions in any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA, in which event this Section 6 shall not be applicable.

Section 7: Indemnification

7.1 To the fullest extent permitted by law, and subject to the limitations set forth in Section 6 of this Agreement, each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party, and its current and future direct and indirect parent companies, affiliates and their shareholders, officers, directors, employees, agents, servants and assigns (collectively, the "Indemnified Party"), and at the Indemnified Party's option, the Indemnifying Party shall defend the Indemnified Party, from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including, but not limited to, the Indemnified Party's employees and its affiliates' employees, subcontractors and subcontractors' employees, or any other liability incurred by the Indemnified Party, including reasonable expenses, legal and otherwise, which shall include reasonable attorneys' fees, caused wholly or in part by any negligent, grossly negligent or willful act or omission by the Indemnifying Party, its officers, directors, employees, agents or assigns arising out of this Agreement, except to the extent caused wholly or in

part by any negligent, grossly negligent or willful act or omission of the Indemnified Party.

7.2 If any claim covered by Section 7.1 is brought against the Indemnified Party, then the Indemnifying Party shall be entitled to participate in, and unless in the opinion of counsel for the Indemnified Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages of any kind whatsoever, whether in contract, tort or strict liability.

7.3 The Indemnifying Party's obligation to indemnify under this Section 7 shall survive termination of this Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Indemnifying Party under any statutory scheme, including, without limitation, under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

Section 8: Assignment and Delegation

8.1 Neither Party to this Agreement shall assign any of its rights or obligations under this Agreement, except with the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment of this Agreement shall relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee. When duly assigned in accordance with the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the assignee and the assignor shall be relieved of its rights and obligations. Any assignment in violation of this Section 8 shall be void.

8.2 Notwithstanding the provisions of this Section 8, either Party may subcontract its duties under this Agreement to a subcontractor, provided that the subcontracting Party shall remain fully responsible as a principal and not as a guarantor for performance of any subcontracted duties, shall serve as the point of contact between its subcontractor and the other Party, and shall provide the other Party with thirty (30) calendar days' prior written notice of any such subcontracting, which notice shall include such information about the subcontractor as the other Party shall reasonably require. If either Party subcontracts any of its duties hereunder, it shall cause its subcontractors to perform in a manner, which is in conformity with that Party's obligations under this Agreement.

Section 9: Independent Contractors

Each Party shall perform its obligations under this Agreement (including any obligations performed by a Party's designees as permitted under Section 8 of this Agreement) as an independent contractor.

Section 10: Entire Agreement

This Agreement consists of, in its entirety, this Community Choice Aggregator Service Agreement and all attachments hereto, all Community Choice Aggregation Service Requests submitted pursuant to this Agreement and SDG&E's community choice aggregation tariffs. This Agreement supersedes all other agreements or understandings, written or oral, between the Parties related to the subject matter hereof, with the express exception of any Nondisclosure Agreement relating to the disclosure of confidential information to the CCA. This Agreement may be modified from time to time only by an instrument in writing, signed by both Parties.

Section 11: Nondisclosure

11.1 Notwithstanding anything provided below, prior to receiving any SDG&E confidential customer information, CCA agrees to enter into the CCA Non-Disclosure Agreement and be bound by its terms with respect to Confidential Information as defined therein.

Neither Party may disclose any Confidential Information obtained pursuant to this Agreement to any third party, including affiliates of such Party, without the express prior written consent of the other Party. As used herein, the term "Confidential Information" shall include, but not be limited to, all business, financial, and commercial information pertaining to the Parties, customers of either or both Parties, suppliers for either Party, personnel of either Party, any trade secrets, and other information of a similar nature, whether written or in intangible form that is marked proprietary or confidential with the appropriate owner's name. Confidential Information shall not include information known to either Party prior to obtaining the same from the other Party, information in the public domain, or information obtained by a Party from a third party who did not, directly or indirectly, receive the same from the other Party to this Agreement or from a party who was under an obligation of confidentiality to the other Party to this Agreement or information developed by either Party independent of any Confidential Information. The receiving Party shall use the higher of the standard of care that the receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such Confidential Information. Each receiving Party shall, upon termination of this Agreement or at any time upon the request of the disclosing Party, promptly return or destroy all Confidential Information of the disclosing Party then in its possession.

11.2 Notwithstanding the preceding, Confidential Information may be disclosed to any governmental, judicial or regulatory authority requiring such Confidential Information pursuant to any applicable law, regulation, ruling, or order, provided

that: (a) such Confidential Information is submitted under any applicable provision, if any, for confidential treatment by such governmental, judicial or regulatory authority; and (b) prior to such disclosure, the other Party is given prompt notice of the disclosure requirement so that it may take whatever action it deems appropriate, including intervention in any proceeding and the seeking of any injunction to prohibit such disclosure.

Section 12: Enforceability

If any provision of this Agreement or the application thereof, is to any extent held invalid or unenforceable, the remainder of this Agreement and the application thereof, other than those provisions which have been held invalid or unenforceable, shall not be affected and shall continue in full force and effect and shall be enforceable to the fullest extent permitted by law or in equity.

Section 13: Notices

13.1 Except as otherwise provided in this Agreement, any notices under this Agreement shall be in writing and shall be effective upon delivery if delivered by (a) hand; (b) U.S. Mail, first class postage pre-paid, or (c) facsimile, with confirmation of receipt to the Parties as follows:

If the notice is to CCA:

Name of Entity: _____

Contact Name: _____

Business Address: _____

Facsimile: _____

If the notice is to SDG&E:

Contact Name: Angela LaCerva

Business Address: 8306 Century Park Ct CP-42K , San Diego, CA 92123

Facsimile: (858) 654-1256

13.2 Each Party shall be entitled to specify as its proper address any other address in the United States upon written notice to the other Party.

13.3 Each Party shall designate on Attachment A the person(s) to be contacted with respect to specific operational matters relating to Community Choice Aggregation Service. Each Party shall be entitled to specify any change to such person(s) upon written notice to the other Party.

Section 14: Time of Essence

The Parties expressly agree that time is of the essence for all portions of this Agreement.

Section 15: Dispute Resolution

15.1 The form of this Agreement has been filed with and approved by the CPUC as part of SDG&E's applicable tariffs. Except as provided in Section 15.2 and 15.3, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of SDG&E's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to resolve their dispute. Pending such resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes.

15.2 Except as provided in Section T.3 of Electric Rule 27, any dispute arising between the Parties relating to interpretation of the provisions of this Agreement or to the performance of the CCA's obligations hereunder shall be reduced to writing and referred to the Parties' representatives identified on Attachment A for resolution, with the responding Party filing its written response within thirty (30) business days after receiving the written position of the complaining party. Thereafter, the Parties shall be required to meet and confer within ten (10) business days in a good faith effort to

resolve their dispute. Pending resolution, the Parties shall continue to proceed diligently with the performance of their respective obligations under this Agreement, unless this Agreement has been terminated under Section 4.2. If the Parties fail to reach an agreement within ten (10) additional business days of the last session to meet and confer, the matter shall, upon demand of either Party, be submitted to resolution before the CPUC in accordance with the CPUC's rules, regulations and procedures applicable to resolution of such disputes, as allowed by law or in equity, or the parties may mutually agree to pursue mediation or binding arbitration to resolve such issues.

15.3 Notwithstanding the provisions of Paragraph 15.1 and 15.2 above: (a) all disputes between the Parties relating to the payment by the CCA of any SDG&E fees or charges shall be subject to the provisions of SDG&E's applicable tariffs governing disputes over customer bills; (b) all disputes between the Parties regarding non-bypassable charges (including Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by the Commission) payable by community choice aggregation customers or the CCA on behalf of such customers shall be subject to the provisions of SDG&E's applicable tariffs; and (c) SDG&E may pursue available remedies in law or equity for unauthorized electrical use by the CCA in a court of competent jurisdiction.

15.4 If the dispute involves a request for damages, parties understand that the Commission has no authority to award damages. To resolve such issues, the parties may mutually agree to pursue mediation or binding arbitration to resolve such issues, or if no such agreement is reached, to pursue other legal or equitable remedies that are available to the parties.

Section 16: Applicable Law and Venue

This Agreement shall be interpreted, governed by and construed in accordance with the laws of the State of California, and shall exclude any choice of law rules that direct the application of the laws of another jurisdiction, irrespective of the place of execution or of the order in which the signatures of the parties are affixed or of the place or places of performance. Except for matters and disputes with respect to which the CPUC is the initial proper venue for dispute resolution pursuant to applicable law or this Agreement, the federal and state courts located in San Diego County, California shall constitute the sole proper venue for resolution of any matter or dispute hereunder, and the Parties submit to the exclusive jurisdiction of such courts with respect to such matters and disputes.

Section 17: Force Majeure

Neither Party shall be liable for any delay or failure in the performance of any part of this Agreement (other than obligations to pay money) due to any event of force majeure or other cause beyond its reasonable control, including but not limited to, unusually severe weather, flood, fire, lightning, epidemic, quarantine restriction, war, sabotage, act of a public enemy, earthquake, insurrection, riot, civil disturbance, strike, work stoppage caused by jurisdictional and similar disputes, restraint by court order or public authority, or action or non-action by or inability to obtain authorization or approval from any governmental authority, or any combination of these causes, which by the exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by the exercise of due diligence is unable to overcome. It is agreed that upon the Party so affected giving written notice and reasonably full particulars of such force majeure to the other Party within a reasonable time after the cause relied on, then the obligations of the Party, so far as they are affected by the event of force majeure, shall be suspended during the continuation of such inability and circumstance and shall, so far as possible, be remedied with all reasonable dispatch. In the event of force majeure, as described herein, both Parties shall take all reasonable steps to comply with this Agreement and SDG&E's applicable tariffs despite occurrence of a force majeure event.

Section 18: Unauthorized Use of Energy (Energy Theft)

- 18.1 The CCA represents and warrants that for each of its Customers, and at all times during which it provides community choice aggregation services as a Community Choice Aggregator, the CCA shall completely, accurately, and in a timely manner account for each of its Customer's loads. Load data not accounted for in this manner may provide grounds for termination of this Agreement. For verification purposes only, SDG&E shall have complete access to the load data provided to the ISO by the CCA. Such information is to remain confidential, and shall not be disclosed to any unauthorized person other than the CPUC, the California Independent System Operator or other law enforcement or regulatory authority.
- 18.2 SDG&E shall notify the CCA immediately and the CCA shall notify SDG&E immediately of any suspected unauthorized energy use. The Parties agree to preserve any evidence of unauthorized energy use. Once unauthorized energy use is suspected, SDG&E, in its sole discretion, may take any or all of the actions permitted under SDG&E's applicable tariffs.

Section 19: Not a Joint Venture

Unless specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

Section 20: Conflicts Between this Agreement and SDG&E's Community Choice Aggregation Tariff

Should a conflict exist or develop between the provisions of this Agreement and SDG&E's community choice aggregation tariff, as approved by the CPUC, the provisions of SDG&E's community choice aggregation tariff shall prevail.

Section 21: Amendments or Modifications

- 21.1 Except as provided in Section 22.2, no amendment or modification shall be made to this Agreement, in whole or in part, except by an instrument in writing executed by authorized representatives of the Parties, and no amendment or modification shall be made by course of performance, course of dealing or usage of trade.
- 21.2 This Agreement may be subject to such changes or modifications as the CPUC may from time to time direct or necessitate in the exercise of its jurisdiction, and the Parties may amend the Agreement to conform to changes directed or necessitated by the CPUC. In the event the Parties are unable to agree on the required changes or modifications to this Agreement, their dispute shall be resolved in accordance with the provisions of Section 15 hereof or, in the alternative, CCA may elect to terminate this Agreement upon written notice to SDG&E, which shall be effective upon the receipt thereof. SDG&E retains the right to unilaterally file with the CPUC, pursuant to the CPUC's rules and regulations, an application for a change in SDG&E's rates, charges, classification, service or rules, or any agreement relating thereto.

Section 22: Audits

- 22.1 SDG&E shall retain such specific records as may be required to support the accuracy of meter data provided in SDG&E's consolidated billings. When the CCA reasonably believes that errors related to metering or billing activity may have occurred, the CCA may request the production of such documents as may be required to verify the accuracy of such metering and consolidated billing. Such documents shall be provided within ten (10) business days of such request.

In the event the CCA, upon review of such documents, continues to believe that the SDG&E's duty to accurately meter and provide consolidated billing for usage has been breached, the CCA may direct that an audit be conducted. The CCA shall designate their own employee representative or their contracted representative to audit SDG&E's records.

- 22.2 Any such audit shall be undertaken by the CCA, or their contracted representative at reasonable times without interference with SDG&E's business operations, and in compliance with the SDG&E's security procedures. SDG&E and the CCA agree to cooperate fully with any such audit.
- 22.3 Specific records to support the accuracy of meter data provided in the consolidated billings may require examination of billing and metering support documentation maintained by subcontractors. SDG&E shall include a similar clause in its agreements with subcontractors reserving the right to designate their own employee representative, or their contracted representative to audit records related to consolidated billing to Community Choice Aggregation Customers.
- 22.4 The CCA will notify SDG&E in writing of any exception taken as a result of an audit. SDG&E shall refund the amount of any undisputed exception to the CCA within ten (10) days. If SDG&E fails to make such payment, SDG&E agrees to pay interest, accruing monthly, at a rate equal to the prime rate plus two percent (2%) of Bank of America NT&SA, San Francisco, or any successor institution, in effect from time to time, but not to exceed the maximum contract rate permitted by the applicable usury laws of the State of California. Interest will be computed from the date of written notification of exceptions to the date SDG&E reimburses the CCA for any exception. The cost of such audit shall be paid by the auditing Party; provided, however, that in the event an audit verifies overcharges of five percent (5%) or more, then PG&E shall reimburse the CCA for the cost of the audit.

22.5 This right to audit shall extend for a period of three (3) years following the date of final payment under this Agreement. Each party and each subcontractor shall retain all necessary records and documentation for the entire length of this audit period.

Section 23: Miscellaneous

23.1 Unless otherwise stated in this Agreement: (a) any reference in this Agreement to a section, subsection, attachment or similar term refers to the provisions of this Agreement; (b) a reference to a section includes that section and all its subsections; and (c) the words “include,” “includes,” and “including” when used in this Agreement shall be deemed in each case to be followed by the words “without limitation.” The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement

23.2 The provisions of this Agreement are for the benefit of the Parties and not for any other person or third party beneficiary. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization other than a Party or a successor or assignee of a Party to this Agreement.

23.3 The descriptive headings of the various sections of this Agreement have been inserted for convenience of reference only and shall in no way define, modify or restrict any of the terms and provisions thereof.

23.4 Any waiver at any time by either Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not be deemed a waiver with respect to any other or subsequent default or matter and no waiver shall be considered effective unless in writing.

23.5 Each Party shall be responsible for paying its own attorneys’ fees and other costs associated with this Agreement, except as provided in Sections 6 and 7 hereof. If a dispute exists hereunder, the prevailing Party, as determined by the CPUC, or as may otherwise be determined by the dispute resolution procedure contained in Section 15 hereof, if used, or by a court of law, shall be entitled to reasonable attorneys’ fees and costs.

23.6 To the extent that the CPUC has a right under then-current law to audit either Party’s compliance with this Agreement or other legal or regulatory requirements pertaining to Community Choice Aggregation transactions, that Party shall cooperate with such audits. Nothing in this Section shall be construed as an admission by either Party with respect to the right of the CPUC to conduct such audits or the scope thereof.

23.7 Except as otherwise provided in this Agreement, all rights of termination, cancellation or other remedies in this Agreement are cumulative. Use of any remedy shall not preclude any other remedy in this Agreement.

The Parties have executed this Agreement on the dates indicated below, to be effective upon the later date.

On Behalf of CCA

By: _____

Name: _____

Title: _____

Date: _____

On Behalf of SDG&E

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT A

A. Definitions:

Billing Services - The consolidated billing services described in SDG&E's community choice aggregation tariff which are provided by SDG&E.

Community Choice Aggregation Customer - An end-use customer located within SDG&E's service territory who purchases Community Choice Aggregation Services through the CCA.

Community Choice Aggregator (CCA) – An entity that provides electric supply services to Community Choice Aggregation customers within SDG&E's service territory. A CCA may also provide certain energy efficiency and conservation programs to its Community Choice Aggregation customers as provided for under SDG&E's tariffs.

CCA Charges - Charges for Community Choice Aggregation Services provided by the CCA.

SDG&E Charges - Charges (a) for services provided by SDG&E; or (b) which are energy-related and which are approved by the CPUC or the Federal Energy Regulatory Commission (including any nonbypassable charges (such as Competition Transition Charges, Cost Responsibility Surcharges, and any other nonbypassable charges adopted by a regulatory body).

B. Contact Persons (Section 13.3):

Billing Services

SDG&E Contact: Andrew Barlow - abarlow@sdge.com

CCA Contact: _____

C. Parties' Representatives (Section 15.1):

SDG&E Representative:

Contact Name Angela LaCerva - alacerva@sdge.com

Business Address 8306 Century Park Ct. CP-42K
San Diego, CA 92130

CCA Representative:

Contact Name _____

Business Address _____

SAN DIEGO COMMUNITY POWER
Staff Report – Item 12

To: San Diego Community Power Board of Directors

From: Cody Hooven, SDCP Interim Executive Officer
Director/Chief Sustainability Officer, City of San Diego

Subject: Approval of Community Advisory Committee Nominees

Date: April 23, 2020

Recommendation

Approve nominees from each member city to the inaugural Community Advisory Committee.

Background

Section 5.10.3 of the SDCP Joint Powers Authority (JPA) Agreement provides as follows:

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 program of the Authority. 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.

Moreover, at the January 30th, 2020 Special Meeting of the Board of Directors, the Community Advisory Committee membership application, applicant criteria, and scope of work were approved by the Board. Specifically, the Board directed staff to welcome applicants that either lived, worked, or whose work had a presence in their jurisdictions.

Analysis and Discussion

Applications for the SDCP Community Advisory Committee were accepted beginning February 3rd through March 6th. Notice of the call for applications was shared via member cities' social media, websites, email lists, and in individual Board of Director communications. The notice also made the local news, appearing in a February 19th article of the San Diego Union Tribune. In total, 63 applications were received.

Throughout the application process, SDCP staff distributed updates on the applications as well as resumes received with each Director and staff. Staff assisted individual Directors with their

nominations, ensuring that the pool of proposed nominations are from the diverse social, economic and racial backgrounds that are representative of all residents within SDCP’s service territory. Staff and the individual Board members also identified what term each nominee will serve, either the two-year or three-year term.

Below is a list of each Director’s nominees for the Community Advisory Committee. Nominee 1 will serve terms until April 2022, and Nominee 2 will serve terms until April 2023.

Due to illness of Vice Chair Padilla, Director representing Chula Vista, nominees from the City of Chula Vista will be brought to the Board in May for approval.

	NOMINEE 1	NOMINEE 2
SAN DIEGO	Eddie Price	Matthew Vasilakis
CHULA VISTA	TBD in May	TBD in May
LA MESA	Lacy Bird	David Harris
ENCINITAS	Gary Lorens Jahns	Tara Hammond
IMPERIAL BEACH	Anna Web	Charles T. Summers

Among the nominees include renters, business and property owners, as well as representatives of community-based organizations in our member cities.

Once the final nominees are approved by the Board, staff will coordinate with them to help facilitate the first meeting.

Fiscal Impact

Cost of this action may include staff time to support the meetings.