

AGENDA

MEETING OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER

February 27, 2020

5:00 p.m.

San Diego City Administration Building, 12th Floor
202 "C" Street, San Diego, CA 92101

AGENDA

Note: Any member of the public may address the San Diego Community Power (SDCP) Board of Directors on any agenda item. To speak on a matter not appearing on the agenda, but within the jurisdiction of the Board, you may do so during Public Comments at the beginning of the meeting. Please complete a Speaker Request Form and submit it to the Board Clerk before the start of the meeting if possible, or in advance of the specific item on which you wish to speak. When addressing the Board, it is requested that you provide your name and city of residence for the record. Speakers are requested to address the Board as a whole through the Chair. Comments are generally limited to three (3) minutes per individual. If you have anything that you wish to be distributed to the Board, please provide it to the Board Clerk, who will distribute the information to the Board Members.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

ITEMS TO BE ADDED, WITHDRAWN OR REORDERED ON THE AGENDA

PUBLIC COMMENTS

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board.

CONSENT AGENDA

(Item 1)

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

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

3. RESOLUTION ADOPTING A DELEGATED CONTRACT AUTHORITY POLICY

Adopt a Resolution adopting a delegated contract authority policy for administrative contracting purposes.

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

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.

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

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.

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

Authorize the execution of the Cooperation and Administrative Services Agreement with City of San Diego, providing certain services to San Diego Community Power (SDCP) by the City and reimbursement to the City of these services.

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

Establish the Finance and Risk Management Committee and appoint two Board Members to serve on the Finance and Risk Management Committee until December 2020.

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 SDGP 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.

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 RegionalEnergy@sanidiego.gov. 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.sandiego.gov/sustainability/clean-and-renewable-energy/ccea. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Board 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. The documents may also be posted at the above website. Late-arriving documents received during the meeting are available for review by making a verbal request to the Board Secretary in the meeting room.

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

MINUTES

January 30, 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 5:03 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) arrived at 5:10 p.m., Board Member Baber (La Mesa), Board Member Montgomery (San Diego), and Board Member West (Imperial Beach)

ABSENT: None

Also Present: Interim Executive Officer Hooven, General Counsel Baron, 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

Karl Aldinger, San Diego Green New Deal, spoke on opposing San Diego Gas and Electric's (SDG&E) proposal to increase the minimum bill and add a fixed charge to all ratepayers' bills.

Matthew Vasilakis, Climate Action Campaign, encouraged the Board to monitor and engage in the ongoing efforts by the City of San Diego to develop a twenty-first century clean energy system via its franchise agreement.

Joyce Lane, San Diego 350, spoke regarding SDG&E's minimum bill and fixed fee increase proposal.

CONSENT AGENDA

1. MEETING MINUTES

ACTION: Motioned by Board Member Montgomery (San Diego) and seconded by Board Member West (Imperial Beach) to approve the minutes for the San Diego Community Power Board of Directors meetings held Thursday, November 21, 2019 and Monday, December 9, 2019. The motion carried by the following vote:

Vote: 4-0

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

No: None

Abstained: None

Absent: Vice Chair Padilla (Chula Vista)

Vice Chair Padilla (Chula Vista) arrived at 5:10 p.m.

REGULAR AGENDA

2. OPERATIONS AND ADMINISTRATION REPORT FROM THE INTERIM EXECUTIVE OFFICER

Interim Executive Officer Hooven said the meeting location may change to the committee room and provided an update on the status of the various RFPs, the memorandums of understanding with the City of San Diego and City of La Mesa for support services, and staff discussions with SDG&E.

Board questions and comments ensued.

Shawn Marshall, Executive Director, Lean Energy US, reported on the SDCP executive recruitment efforts and said staff recommended the Board approve the formation of an ad-hoc executive search committee and authorize the Interim Executive Officer and/or Board Chair to enter into an executive recruitment contract in an amount not to exceed \$80,000.

Board questions and comments continued.

ACTION: Following Board discussion, it was the consensus of the Board to appoint Chair Mosca (Encinitas) and Vice Chair Padilla (Chula Vista) to the Ad-hoc Executive Search Subcommittee for the purpose of assisting Shawn Marshall with the recruitment of the San Diego Community Power Executive Officer.

Following the vote on Item 3, the Board returned to Item 2 to consider the second component of the staff recommendation for Item 2.

Shawn Marshall, Executive Director, Lean Energy US, explained the purpose for authorizing the Interim Executive Officer and/or Board Chair to enter into an executive recruitment contract in an amount not to exceed \$80,000.

ACTION: Motioned by Board Member West (Imperial Beach) and seconded by Chair Mosca (Encinitas) to authorize the Interim Executive Officer and/or Board Chair to enter into an executive recruitment contract in an amount not to exceed \$80,000. 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

3. FORMATION OF THE COMMUNITY ADVISORY COMMITTEE: APPROVAL OF MEMBERSHIP CRITERIA AND TERMS, APPLICATION FORM, COMMITTEE PURPOSE AND SCOPE

Interim Executive Officer Hooven provided an overview of the Community Advisory Committee's (CAC) proposed membership criteria and terms, purpose and scope, application form, and selection process.

Board questions and comments ensued.

Erika Morgan, City of San Diego resident, California Alliance for Community Energy, spoke in support of staff's recommendation on the formation of the CAC with changes.

Joyce Lane, San Diego 350, spoke regarding the proposed CAC membership criteria and recruitment process.

Matthew Vasilakis, Climate Action Campaign, spoke regarding the proposed CAC membership criteria.

General Counsel Baron read the CAC requirements as written in the Joint Powers Authority (JPA) Agreement.

Interim Executive Officer Hooven explained the support CAC would receive from SDCP staff.

Board questions and comments continued.

ACTION: Motioned by Vice Chair Padilla (Chula Vista) and seconded by Chair Mosca (Encinitas) to approve: (1) the Community Advisory Committee (CAC) Membership Criteria and Terms with the primary qualifier being that members reside within one of SDCP's five-member cities: Chula Vista, Encinitas, Imperial Beach, La Mesa and San Diego; (2) the CAC Application Form and Selection; and (3) the CAC Purpose and Scope with the following amendments: (a) add aspirational language such as a robust value statement focused on diversity; (b) have the annual work plan align with the CAC Scope provided by the Board and the Board's Strategic Goals; and (c) further clarify the CAC's mission. 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. **FORMATION OF THE FINANCE AND RISK MANAGEMENT COMMITTEE**

Interim Executive Officer Hooven reviewed the primary purpose of the Finance and Risk Management Committee and said staff recommended the Board: (1) appoint two Board Members to serve on the Finance and Risk Management Committee for a one-year term; and (2) approve the expansion of the scope of the Finance and Risk Management Committee to include energy risk management.

Board questions and comments ensued.

General Counsel Baron read the Finance and Risk Management Committee requirements as written in the JPA Agreement.

Board questions and comments continued.

ACTION: Following Board discussion, it was the consensus of the Board to send the item back to staff for further clarification on the language of the JPA Agreement as it relates to the role of alternates and the Finance and Risk Management Committee.

5. **UPDATE ON THE IMPLEMENTATION TIMELINE, INCLUDING POLICY ADOPTION SCHEDULE**

Interim Executive Officer Hooven provided an update on the implementation timeline and policy adoption schedule for the operations of SDCP.

Board questions and comments ensued.

Erika Morgan, City of San Diego resident, California Alliance for Community Energy, spoke regarding concerns with the implementation timeline.

Following Board questions and comments, no action was taken.

6. DISCUSSION OF AMENDMENTS TO SDCP JOINT POWERS AUTHORITY (JPA) AGREEMENT

Vice Chair Padilla (Chula Vista) reviewed the JPA Agreement amendments proposed by Sierra Club and International Brotherhood of Electrical Workers (IBEW) Local 569.

General Counsel Baron reviewed the JPA Agreement amendment process and provided the four options available for implementing the proposed amendments: (1) amend the JPA Agreement; (2) adopt operating procedures or bylaws; (3) adopt resolution(s); or (4) proceed with an informal policy without a formal document.

Board questions and comments ensued

Gretchen Newsom, IBEW Local 569, spoke on the purpose and in support of the JPA Agreement amendments proposed by Sierra Club and IBEW Local 569.

Rick Bates, Unite Here Local 30, spoke in support of the JPA Agreement amendments proposed by Sierra Club and IBEW Local 569.

Cody Petterson, San Diego County Democrats for Environmental Action, spoke in support of the JPA Agreement amendments proposed by Sierra Club and IBEW Local 569.

Erika Morgan, City of San Diego resident, California Alliance for Community Energy, spoke on concerns with the JPA Agreement as written and requested the JPA Agreement be amended to make the exclusion of nuclear power complete and infallible.

Eddie Price, San Diego Urban and Sustainability Coalition, spoke regarding concerns with the JPA Agreement amendments proposed by Sierra Club and IBEW Local 569 and on communities of concern.

Lane Sherman, San Diego Energy District, spoke on nuclear power and in support of the JPA Agreement amendments proposed by Sierra Club and IBEW Local 569.

Shawn Marshall, Executive Director, Lean Energy US, commented on how other Community Choice Aggregations managed the matters presented in the JPA Agreement amendments proposed by Sierra Club and IBEW Local 569. Shawn Marshall, Executive Director, Lean Energy US, explained the impact the proposed amendments would have on the SDCP Integrated Resource Plan.

Board questions and comments continued.

ACTION: Motioned by Vice Chair Padilla (Chula Vista) and seconded by Board Member West (Imperial Beach) to direct staff to return in 60 days with draft amendments consistent with the JPA Agreement amendments proposed by Sierra Club and IBEW Local 569 for consideration by the Board. – WITHDRAWN

Board questions and comments continued.

Vice Chair Padilla (Chula Vista) withdrew his motion due to lack of support.

ACTION: Following Board discussion, it was the consensus of the Board to direct staff to accelerate policies on workforce, communities of concerns, and nuclear power.

7. UPDATE ON ENERGY REGULATORY AFFAIRS FROM TOSDAL, APC

Ty Tosdal, Tosdal APC, provided an update on energy regulatory affairs as they relate to the interests of SDCP.

Board questions and comments ensued.

ACTION: Following Board discussion, it was the consensus of the Board to direct Ty Tosdal, Tosdal APC, on behalf of SDCP, to oppose SDG&E's proposal to increase the minimum bill and add a fixed charge to all ratepayers' bills.

Brenna Alexander, Sullivan Solar Power, spoke regarding SDG&E's minimum bill and fixed fee increase proposal.

Following Board questions and comments, no action was taken.

DIRECTOR COMMENTS

There were no comments.

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

There were no reports.

ADJOURNMENT

Chair Mosca (Encinitas) adjourned the meeting at 7:33 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: February 27, 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) Vendor RFPs

Upcoming RFPs include data management/call center and marketing services. The data management RFP will be released in the next several weeks and the marketing services RFP will be released in March. Negotiations with River City Bank continue for the credit and banking facility. Staff hoped to present a final agreement to the Board in February but this will be delayed. We will provide an updated timeline as soon as possible.

B) SDCP Staff Workload and 2020 Policy Matrix

As an agency in its infancy, there are many activities that are underway concurrently to launch SDCP successfully. These include negotiating financing in order to fund the remaining the activities, regulatory tracking and engagement, and procurement processes for critical services. These activities must occur in a sequence that balances the current capacity of the interim staff.

The interest from the Board to establish a variety of policies is appreciated, including topics such as nuclear power, workforce, and Communities of Concern raised at the January 2020 meeting. For clarity and to address these interests, attached to this report is a matrix of SDCP policies of interest that will be completed over the course of this year. Drawn from the updated Implementation Timeline that was adopted at the January 30th Special Meeting, the matrix attached provides an abbreviated overview of the policies staff is working on now and through 2020.

Staff also is currently working with SDCP's attorneys to develop Agency bylaws. We expect these will be brought to the Board for adoption in March, along with the first batch of administrative policies that are considered a priority for near-term agency operations.

C) Community Advisory Committee

At the January 2020 Special Meeting, the Board approved the formation of the Community Advisory Committee and the application form and process. The process of creating the Community Advisory Committee as follows:

- Application forms made available to the public on February 4th, 2020 and publicized by each Board Member and member agency
 - Promoted through social media, press releases, San Diego Union Tribune article, and additional formats chosen by each member agency
- Applications will be accepted until February 28th and then distributed to each Board Member based on which city the applicant(s) resides, works or owns a business in
- Each Board Member, with assistance from SDCP staff, will review the applications to select two nominees from each member city in preparation for the Board meeting on March 26th
- Present nominees at the March Board meeting for Board approval

D) MOU with City of La Mesa for Administrative and Support Services

Staff from the City of San Diego and City of La Mesa are performing Interim Executive Officer, administrative, and Board Secretary duties, respectively, for SDCP. In order to formalize this arrangement and establish terms and conditions for the types of services provided, compensation of those agencies, and the number of hours that will be provided, staff and General Counsel are presenting a proposed MOU with the City of San Diego for the Board to consider at this current meeting, and an MOU with the City of La Mesa at a subsequent meeting.

E) Discussions with San Diego Gas & Electric (SDG&E)

Staff and SDCP consultants 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. Discussions in this area include data requests and response timelines, CPUC deadlines and opportunity for supportive reply comments, meet and confer needs, and other opportunities for coordination. We have been in touch over email and meet in person, as needed. MRW and Associates, LEAN Energy US, and Tosdal, APC are all involved at various levels. Once the Energy Services Provider is approved by the Board and starts work, that firm will also be key to these coordination meetings.

F) Executive Recruitment

Shawn Marshall with LEAN Energy US, a consultant to SDCP, is leading this effort and the process is underway. Ms. Marshall is working with a sub-committee of the Board to select and onboard an executive recruitment firm in order to begin the recruitment process. The following

is the timeline and steps in the process. Ms. Marshall will be available at the Board meeting to provide additional details.

Month	Activity
February 2020	Select winning firm and finalize contract
March 2020	Prepare job posting and open recruitment
April 2020	Application period ends; initial candidate review
April- June 2020	Top candidate selection and interviews (anticipate 2-3 rounds); Board approvals/hiring process

G) 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: 2020 Policy Matrix

Attachment B: February Regulatory Update

San Diego Community Power

2020 Policy Matrix

Purpose:

This matrix reflects the broader Implementation Timeline while focusing on an abbreviated overview of the policies staff is working on through 2020.

Notes:

1. Policies listed below are drawn from the most recent Implementation Timeline adopted at the January 30th Board of Directors meeting and 11 California CCAs¹
2. Policies are intended to guide SDCP operations and procedures rather than set future or aspirational goals.
3. SDCP may wish to consider blending (or bundling) specific policies within general policy categories to reduce the number of individual policies it manages. It may also wish to consider additional policies not included here as its program develops and operational needs evolve.

POLICY CATEGORY/SUBJECT	DESCRIPTION	2020 TIMING/STATUS
ADMINISTRATIVE & OPERATIONS		
SDCP Conflict of Interest Code	Standard C of I policy for seated Board members and relevant SDCP staff members.	Q1
CEO Spending Authority	Authorizes CEO signing authority without prior Board approval; SDCP may consider two policies – one for operational contracts and one for power supply contracts. Describes Board reporting requirements.	Q1;Q3
Delegation of Authority to CEO for Regulatory and Legislative Matters	Authorizes CEO to respond timely to requests for regulatory and legislative action that directly impact CCA and SDCP operations. Includes Board reporting requirement.	Q1
Enterprise Risk Management	Describes how operational/business risk is determined and mitigated; may also include energy risk management as a component.	Q2
Agency Vendor and Contracting Practices	Describes procurement/vendor contracting guidelines including but not limited to: issuance of RFPs and bid evaluation, local hire, diversity, sustainable and ethical vendor preferences, signing authorities, reporting etc.	Q1-Q2
Records Retention; Public Access	Compliant with state and federal law, the length of time records of various types will be retained and/or discarded; includes guidelines for public access to SDCP records.	Q2
Information Technology Security	Policies and standards developed by IT security team to manage regulatory compliance, ensure proper staff training and customer satisfaction and minimize legal and criminal risk related to data and information breach. Could also include the AMI data policy described below.	Q3-Q4
Advance Metering Infrastructure (AMI) Data Security and Privacy	Ensures the privacy and security of AMI data and customer usage information pursuant to Attachment B of the California Public Utilities Commission Decision 12-08-045; could be part of a broader information technology/customer data policy.	Q3-Q4
Social Media	Describes purpose of using these channels and defines rights/reasons for comment or post removals.	Q3
JPA Expansion/New Members	Considerations when exploring program expansion to areas outside original service area and method of approving new JPA members.	Q3

¹ Clean Power Alliance, Clean Power SF, East Bay Community Energy, Monterey Bay Community Energy, MCE Clean Energy, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, Valley Clean Energy.

Process for Amending/Adopting Agency Policies and JPA Agreement Amendments	Procedures to review/adopt new or amend Agency policies and JPA Amendments. This could also be part of the bylaws.	Q2
PERSONNEL/WORKFORCE		
Employee Handbook/Personnel Policies	Describes all legally required elements of an employee policy including fair employment practices, non-discrimination, standard business hours, paid and personal time off, holidays, sick leave, etc.	Q2-Q3
Other Personnel Policies: Travel and expense reimbursement, laptop/cell phone usage, work from home, etc.	Could be included in the employee handbook or handled as separate policies.	Q2-Q3
Sustainable and Diverse Workforce Policy	Describes SDCP goals and requirements related to sustainable workforce practices, local hire preferences, livable wages, union engagement/project labor agreements, gender and ethnic diversity, etc.	Q2-Q3
CUSTOMER AND COMMUNITY		
Prohibition Against Dissemination of Untrue or Misleading Information	Prohibits dissemination, by SDCP or other organization, of SDCP rates, terms and conditions of service, or other operational elements that are untrue or misleading.	Q3
Customer Data Confidentiality	How customer data is to be treated and how to deal with any privacy or security breaches. States that personal customer shall not be shared unless necessary to conduct specific Agency business. Could also become part of a broader information technology/AMI data policy as described above.	Q3-Q4
Terms and Conditions of Service	Publicly posted customer service policy that provides information on rates, billing, enrollment process, opting out, opting in and failure to pay.	Q4
Terms and Conditions of Service for Early Adopters	If applicable; articulates process for customers who wish to voluntarily enroll in the 100% renewable product in an earlier phase than otherwise scheduled.	Q4
Customer Billing, Enrollment, Delinquent Accounts and Collections	Outlines procedures for customer billing and enrollments, physical address changes, and handling customer accounts that are past due.	Q4
FINANCIAL POLICIES		
Budget and Accounting Policy	Describes process, reporting and principals for a balanced annual budget and its oversight; may also include Agency reserve policy, debt management and accounting policies or other financial policies within this general category.	Q2-Q3
Rate Setting Procedures	Describes rate setting principals, goals and general process.	Q4
Bad Debt	A set percentage revenue reserve to cover bad debt; usually reviewed annually. Could be included in general budget policy.	Q4
Surplus Income Policy - Operating Reserve, Debt Repayment, and Programs	Budgeting policy to allow for long-term financial stability, debt reduction and/or funding of new programs and projects.	Q3
Accounts Receivable Reserves	Estimation procedure for reporting accounts receivables, net assets and earnings using historical data; could also be part of a general budget or reserve policy.	Q4
Signatories on SDCP checks and financial documents	Describes who is authorized to sign checks and legally binding financial documents on behalf of the Agency; could be part of the budget and finance policy.	Q1-Q2
Investment Policy	If needed; provides guidelines to consider Agency investments in real property or other investment vehicles.	Q4

POWER SUPPLY		
Energy Risk Management Policy/ Procedures and Controls for Supply Management and Transactions	Developed in partnership with power services vendor; Describes energy market strategy and processes to regularly monitor, report and manage risk such as credit, liquidity and market risk. Outlines participation in CAISO markets and monitoring transactions. Provides general overview of procurement approach, criteria and practices including open season RFOs and signing authorities. Could also be part of the overall energy risk management policy.	Q2-Q3
Power Content Guidelines	Provides description of renewable and carbon free content targets as well as types of power that may or may not be procured by SDCP	Q3
Net Energy Metering Policy	Describes NEM rates, credits and participation process for NEM customers.	Q4

San Diego Community Power Regulatory Update

February 27, 2020

PCIA Working Group 3 – [R.17-06-026](#)

Task: Portfolio optimization.

Chairs: Southern California Edison (SCE), California Community Choice Association (CalCCA), and Commercial Energy (CE)

Scope of WG 3 issues:

1. Rules and processes to address excess resources in utility portfolios.
2. Active management of utility portfolios to address future departing load.
3. Transition process.
4. Shareholder responsibility for future portfolio mismanagement.

WG 3 Workshop #3 [Presentation](#)

SCE –

- SCE loosely supports allocation of contracts but wants to act as the broker between generator and purchaser.
- SCE does not support assignment of contracts at cost or face value.
- SCE does not support shareholder responsibility or CPUC penalties for portfolio mismanagement.

CalCCA –

- Update long term allocation methodology.
- Use of solicitations to generators that include contract assignments, allocations, and buyouts.
- Immediate implementation of cost reduction measures following CPUC approval.
- Vigorous participation in ERRA and increased IOU reporting.

Schedule

- February 21 – Final Report on WG 3 consensus and non-consensus issues.
- March 13 – Opening comments on WG 3 final report.

- March 27 – Reply comments on WG 3 final report.
- April 3 – Motions for evidentiary hearings on WG 3 issues.
- Q 3 2020 – Proposed decision WG 3 issues.

SDG&E ERRA – [A.19-04-010](#)

Energy Resource Recovery Account (ERRA) is a balancing account where the utilities record and track energy procurement costs (fuel and purchased power). ERRA tracks the difference between the utilities' authorized revenue recovered in customer rates and the actual cost of power. ERRA is an annual proceeding that consist of a forecast for the coming year (filed in April), and a true up of the past year (filed in June).

Decision D.20-01-005 (January 27, 2020)

- Commission granted SDG&E recovery of \$254 million under-collected balance accrued in Portfolio Allocation Balancing Account (PABA).

PCIA rates are calculated in the ERRA proceeding.

- [Schedule CCA-CRS](#), effective February 1, 2020.
- PCIA rates for all vintages increased from 2019 to 2020.
- SDG&E historic [PCIA rate table](#) by vintage.

SDG&E Rate Design [A.17-12-013](#)

Fixed Charges – SDG&E proposed a **\$10 fixed charge**, the statutory maximum, for all residential customers unless they qualify for California Alternate Rates for Energy (CARE), and subject to annual increases based on the Consumer Price Index.

- Fixed costs incurred by the utility (metering, customer service, and other related costs).

Minimum Bill – SDG&E also proposed to increase its minimum bill from \$0.338 per day to **\$1.28 per day (\$38.40 per bill based on a 30-day billing cycle)**.

- Minimum cost that SDG&E incurs to serve a residential customer on a monthly basis (customer costs, grid reliability costs, transmission costs, public policy program costs, and other costs that do not vary by usage).

SDG&E also wanted to offer an option for high-use customers to opt-up to a **\$79.94** minimum bill coupled with lower volumetric rates for energy.

- High use customers could pay more up front each month, but their rates charged for the three different TOU periods would be lower than the default TOU rates.

Impacts to Rate Payers

- Customers who consumed the least amount of energy, such as customers with a net surplus of rooftop solar coupled with battery storage, would see their bills increase up to 250% or more.
- A household that consumed between 300kWh to 800kWh might see their bills decrease by 1% - 6%.
- The projected net rate increase across all customers was 30.28%.
- Individual results vary tremendously depending on how particular customers are situated.
 - SDG&E [corrected population level bill impacts](#) (May 31, 2019)
 - SDG&E [testimony](#) regarding the impacts on customers of its proposed rate design on (March 29, 2019).
 - SDG&E [charts](#) comparing the proposed rate options.

Proposed Decision (February 5, 2020) rejecting SDG&E's fixed charge and minimum bill rate design.

- Lack of compliance with previous Commission Decision that established volumetric rates as a key principle of rate making.
- Lack of clarity in SDG&E's accounting and rationale for the increase.
- Inconsistency with the other utilities, whose minimum bills are around \$10.
- Widespread party opposition.
- Adverse customer impacts.
- PD sets SDG&E's minimum bill at **\$10.14 per month** with no fixed charges.
- Earliest Commission vote is **March 12**.

Direct Access Expansion – [R.19-03-009](#)

- Phase 1 – [Senate Bill 237](#) mandate increasing the maximum allowable limit for direct access transactions by **4,000 Gigawatt hours** among utility territories.
- Phase 2 – Energy Division study regarding direct access expansion to inform the Legislature.

Schedule

- March 9 – Energy Division study published.
- March 30 – Comments on the study.
- April 9 – Reply comments.
- May 22 – Proposed Decision. Vote no sooner than 30 days after PD.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 3

To: San Diego Community Power Board of Directors

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

Subject: Approve Resolution Adopting a Delegated Contract Authority Policy

Date: February 27, 2020

Recommendation

Approve Resolution of the Board of Directors of San Diego Community Power adopting a delegated contract authority policy for administrative contracting purposes.

Background

Section 4.6.6 of the SDCP Joint Powers Authority (JPA) Agreement provides that the Board may adopt policies for procuring “operational needs such as professional services, equipment and/or supplies.” Section 4.6 of the JPA Agreement further provides that the Chief Executive Officer (CEO) may enter into and execute contracts in accordance with the criteria and policies established by the Board.

Analysis and Discussion

As mentioned above, the JPA Agreement allows the Board to delegate certain contracting authority to the CEO, including for operational needs, such as professional services, equipment, and supplies.

Delegating contracting authority to the CEO and other SDCP staff can save time and resources as services are brought onboard that are important to the successful operation of SDCP.

The proposed policy would allow the CEO to execute contracts of up to \$125,000 for non-energy goods and services on behalf of SDCP. Contracts in excess of this amount would require Board approval. In addition, contracts executed by the CEO in excess of \$50,000 would be reported to the Board at a subsequent meeting.

The delegated amount of \$125,000 is consistent with the delegated contracting authority for the Clean Power Alliance in Los Angeles and Ventura counties. In exercising delegated contracting authority, SDCP staff would be required to comply with all legal requirements in awarding contracts, including State law and future policies adopted by the SDCP Board concerning procurement methods. In addition, prior to signing contracts, SDCP staff would be required to ensure: (1) there is sufficient money in SDCP’s budget for such purpose;

(2) adequate funds have been appropriated by the Board; (3) there are unexpended funds available; and (4) the contract has been reviewed and approved as to form by General Counsel.

Staff recommends that the Board approve the attached resolution adopting a delegated contract authority policy.

Fiscal Impact

There is no cost associated with this item.

Attachments:

Attachment A: Resolution of the Board of Directors of San Diego Community Power Adopting a Delegated Contract Authority Policy

Attachment B: SDCP Delegated Contract Authority Policy

RESOLUTION NO. ____

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF SAN DIEGO COMMUNITY POWER
ADOPTING A DELEGATED CONTRACT AUTHORITY
POLICY**

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

B. The JPA Agreement provides that the SDCP Board of Directors may adopt policies for procuring SDCP operational needs, such as professional services, equipment, and supplies; and

C. The JPA Agreement further provides that the Chief Executive Officer may enter into and execute contracts in accordance with the criteria and policies established by the Board.

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

Section 1. The Board of Directors hereby adopts the Delegated Contract Authority Policy attached hereto and incorporated herein as Exhibit A. For purposes of the attached policy, SDCP’s Interim Executive Officer shall have the same powers and duties as the Chief Executive Officer.

Section 2. If any section, subsection, clause or phrase in this Resolution or the application thereof to any person or circumstances is for any reason held invalid, the validity of the remainder of this Resolution or the application of such provisions to other persons or circumstances shall not be affected thereby. The Board hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof to any person or circumstance be held invalid.

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

PASSED AND ADOPTED at a meeting of the Board of Directors of San Diego Community Power held on February 27, 2020.

Joe Mosca, Chair
San Diego Community Power

Megan Wiegelman, Interim Secretary
San Diego Community Power

Approved as to form:

Nicholaus Norvell
Assistant General Counsel

AYES: _____ NAYS: _____ ABSENT: _____ ABSTAIN: _____

San Diego Community Power

Delegated Contract Authority Policy

Purpose:

It is in the interest of San Diego Community Power ("SDCP") to establish administrative contracting procedures that facilitate efficient business operations for SDCP.

Policy:

1. The CEO is authorized as follows without prior Board approval:
 - a. To execute contracts of up to \$125,000 for goods and services; provided, however, that all new contracts in excess of \$50,000 shall be reported at the next regular Board meeting. This authorization does not include power supply or wholesale energy services. SDCP shall comply with all legal requirements applicable to the award of the contract, if any.
 - b. To increase the aggregate contract price of Board-approved non-energy contracts by no more than 10% of the original contract price over the life of the contract.
 - c. To delegate signature authority for purchases of goods or services to other SDCP senior staff members up to the amount of \$50,000. Such delegation shall be memorialized in a written instrument signed by the CEO and maintained by SDCP.
2. Prior to signing any contracts requiring the expenditure of money, the individual signing shall ensure: (1) that all contract expenses have been budgeted for in the current SDCP budget; (2) that adequate funds have been appropriated by the Board; (3) that such funds are unexpended, unencumbered, and sufficient to pay the expenses of the contract, and (4) that the contract has been reviewed and approved as to form and content by the General Counsel or his/her designee.
3. For any contracts, whether Board-approved or executed under delegated authority, the CEO is further authorized to exercise all rights and powers specified under the contract as belonging to SDCP, including but not limited to, changes in original scope, authorization of subcontractors, amendments (provided that the amendment shall be consistent with the limits in this Policy), assignment, insurance, termination, and to perform other acts related to the delivery of non-energy goods and services under the contract. Exception: For scope changes to Board-approved contracts, any core programmatic changes of more than 25% of the original scope shall be approved by the Board.

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

Subject: Approve Agreement with Pacific Energy Advisors for Energy Consulting Services

Date: February 27, 2020

Recommendation

1. Approve energy consulting services agreement with Pacific Energy Advisors (PEA) for a 3-year term beginning in March 2020 through March 2023.
2. Delegate execution of the agreement to the Interim Executive Officer.

Background

On November 27, 2019 SDCP issued Request for Proposal (RFP) 19-001 for wholesale power services to provide energy planning and procurement support, power contract negotiation, rate design assistance, risk management, schedule coordination, integrated resource planning and long-term renewables procurement. The RFP was organized into three task areas including:

Task Area 1: Project planning, portfolio design/management, and energy advisory services

Task Area 2: California Independent System Operator (CAISO) scheduling coordinator and settlement services

Task Area 3: Integrated Resource Planning and IRP development, long-term renewables procurement and distributed energy resource assessment/procurement.

The RFP was sent to hundreds of recipients through the City of San Diego's PlanetBids platform and various other energy networks. Bidders were invited to propose services in one or more task areas. A total of 13 proposals were received by the December 23, 2019 deadline covering all three task areas. Bids were reviewed and scored according to evaluation criteria set forth in the RFP. Five bidders - Black & Veatch, Pacific Energy Advisors, Pilot Power Group, The Energy Authority and Tensaka, Inc. - were short listed and participated in interviews on January 16, 2020.

Evaluation team members included: Cody Hooven, SDCP Interim Executive Officer; Natasha Keefer, Director of Power Planning & Procurement for Clean Power Alliance; Deb Emerson, Director of Power Services, Sonoma Clean Power; Mark Fulmer, Principal and Partner, MRW & Associates; and, Crystal Najera, Climate Action Plan Program Administrator, City of Encinitas.

Shawn Marshall from LEAN Energy US provided coordination and advisory support for this effort.

Analysis and Discussion

Term and Task Areas. Staff is requesting approval of a three-year agreement with Pacific Energy Advisors covering Task Areas 1 and 3 as outlined above. The contract is scheduled to begin on March 1, 2020 and will conclude on March 31, 2023, a timeframe that is anticipated to cover both pre-launch procurement tasks through all phases of customer enrollment and initial service of all customers. Please note that PEA does not offer Task 2/CAISO schedule coordination so those services will be handled under a separate contract which will be brought to the Board for approval at its March 2020 meeting.

Reasons for Selection. Among the finalist companies, Pacific Energy Advisors received the highest composite score in all four evaluation categories (see page 10 of the RFP, found here: <https://www.sandiego.gov/sustainability/clean-and-renewable-energy/ccea>) and were ultimately selected on the merits of their extensive experience providing power services to several operational CCAs in the California, including some of the larger CCAs of similar size and complexity to that of SDCP. PEA has successfully navigated the difficult waters of CA's resource adequacy market, handled the myriad of CPUC compliance and reporting obligations, and successfully completed several Integrated Resource Plans. PEA's staff proved very knowledgeable during the interview process, and staff feels that SDCP will be well served by PEA's participation in future planning and negotiations with SDG&E. Finally, PEA's pricing was very competitive and their references, all from CCA CEOs, were extremely positive and included strong recommendations.

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 PEA's monthly pricing structure and hourly rates for specialized distributed energy work over the three-year contract period.

Fiscal Impact

Approximately \$1.15M (inclusive of monthly fees, hourly work and travel expenses) over the term of the agreement. This cost is consistent with the 24-Month Implementation Budget approved by the Board at their October 31, 2019 meeting.

Attachments:

Attachment A: Agreement with Pacific Energy Advisors including scope and final pricing

AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND PACIFIC ENERGY ADVISORS, INC. FOR ENERGY CONSULTING SERVICES

This Energy Consulting Services Agreement (“**Agreement**”) is made and entered into on _____, 2020 (“**Effective Date**”), by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and PACIFIC ENERGY ADVISORS, INC., a California corporation (“**Consultant**”). SDCP and Consultant are sometimes individually referred to as a “**Party**” and collectively as “**Parties**.”

RECITALS

A. 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 wholesale energy services and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for SDCP’s community choice aggregation program (“**Project**”), as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Scope of Services and Term.

1.1. General Scope of Services. Consultant promises and agrees to furnish to SDCP all services, and incidental and customary work necessary to fully and adequately provide the services described in Exhibit A (“Services”). All Services shall be subject to, and performed in accordance with, this Agreement, the schedules and/or exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

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 March 31, 2023 (“**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.

2. Responsibilities of Consultant.

2.2. 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.

2.2. Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the terms of Exhibit A. 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 timely performance under this Agreement, SDCP shall respond to Consultant's submittals in a timely manner.

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

2.4. Sub-Consultants. 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.

3. Conditions to Consultant's Performance.

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.

3.2 Notification. SDCP shall notify all other relevant parties, including, but not limited to, its data manager ("**Data Manager**"), the Utility Distribution Company ("**UDC**"), which is currently San Diego Gas & Electric, the California Independent System Operator ("**CAISO**") and SDCP's lender(s), as necessary, of the existence of this Agreement and Consultant's role as contemplated in this Agreement.

3.3. SDCP's Representative. SDCP hereby designates **the Interim Executive Officer or Chief Executive Officer**, or designee, to act as its representative for the performance of this Agreement ("**SDCP's Representative**"). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than SDCP's Representative, or designee.

3.4 Consultant's Representatives. Consultant hereby designates **Kirby Dusel and John Dalessi**, or their noted designee(s), to act as Consultant's Representatives for the performance of this Agreement ("**Consultant's Representatives**"). Consultant's Representatives shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representatives shall supervise and direct the Services, using their 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.

3.5 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 mutually agreeable times.

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.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with pertinent local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the 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.

4. Insurance

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

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

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

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$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.

1.3.8.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of two (2) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$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.

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

(A) General Liability.

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

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

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

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

(B) Automobile Liability.

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

(C) Workers’ Compensation and Employers Liability Coverage.

(i) Consultant certifies that 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) Defense costs shall be payable in addition to the limits set forth hereunder.

(ii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SDCP, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(iii) 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).

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

(v) 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.

(vi) 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.

(vii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, SDCP has the right but not the duty to obtain the insurance it deems necessary and any premium paid by SDCP will be promptly reimbursed by Consultant or SDCP will withhold

amounts sufficient to pay premium from Consultant payments. In the alternative, SDCP may cancel this Agreement. SDCP may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(viii) 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.

4.3. 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.

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

4.5. 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.

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

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

5. Fees and Payments.

5.1. Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement as set forth in Exhibit A. Extra Work may be authorized, as described in Section 5.4 below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

5.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized invoice which shall include all fees and authorized expenses related to Services during the previous month. SDCP shall, within 30 days of Consultant's invoice submittal, review the invoice and pay all approved charges thereon.

5.3. Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by SDCP. For all authorized expenses, Consultant shall reflect such items, on an itemized basis, in its monthly invoices as noted in Section 5.2.

5.4. 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.

6. Accounting Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. 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.

7. Termination and Expiration of Agreement: Meet and Confer.

7.1. 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. Upon termination, Consultant shall be compensated in accordance with this section. Consultant may also terminate this Agreement for cause or upon six (6) months written notice to SDCP.

7.2. 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 Schedules, Exhibits and Addenda) upon written notice to the defaulting Party: (i) with respect to SDCP, SDCP fails to pay amounts due hereunder, and such failure continues for fifteen (15) 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.

7.3. Effect of Termination. Upon the date of expiration or notice of termination of this Agreement (whether terminated for convenience or for cause, or whether expiring at the end of a term): (i) Consultant shall cease providing Services and Extra Work hereunder except as required or authorized in Section 3.6.1.4 below; (ii) Consultant shall issue an invoice (the "**Termination Invoice**") to SDCP for (a) all outstanding fees for Services rendered by Consultant through and including the date of expiration or termination, (b) all authorized expenses outstanding and unpaid as of the date of expiration or termination,; and (iii) SDCP shall pay the Termination Invoice within thirty (30) days of Consultant's invoice submittal.

7.4. Transition of Services Upon Termination or Expiration. 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 SDCP 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 and SDCP shall mutually agree on transition activities requiring completion and a reasonable schedule of completion associated therewith. Consultant shall provide to SDCP data and documentation, and other Consultant non-proprietary information reasonably requested by SDCP in connection with the transition. Consultant shall provide transition assistance, subject to a mutually agreeable schedule, 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 or terminates for convenience, 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 (1) 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.

(A) Under no circumstances, except for any event of default by SDCP , shall Consultant cease providing Services to SDCP under this Agreement until clear and unequivocal arrangements for (i) SDCP to assume provision of the Services under this Agreement, (ii) a third party provided to assume provision of the Services under this Agreement, or (iii) a return to Utility electric procurement, is established.

7.5. 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.

7.6. 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.

8. 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: Pacific Energy Advisors, Inc.
Attn: Kirby Dusel
1839 Iron Point Road, Suite 120
Folsom CA 95630

SDCP: San Diego Community Power
Attn: Interim Executive Officer
c/o City of San Diego Sustainability Department
1200 Third Avenue, Suite 1800
San Diego, CA 92101

Such notice shall be deemed made when personally delivered or delivered by nationally recognized courier that renders a receipt for delivery.

9. **Intellectual Property and Confidentiality.**

SDCP owns all right, title and interest in and to all SDCP Materials. Upon the expiration of this Agreement, or in the event of termination, SDCP Materials and all SDCP customer 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. SDCP Materials shall mean any and all data created by Consultant specifically for SDCP in the performance of the Services and Extra Work pursuant to this Agreement (“**SDCP Materials**”).

For the avoidance of doubt, Consultant’s intellectual property, including, but not limited to, Consultant’s trademarks, service marks, trade names and other designations, web site(s), web design(s), internal systems, computer systems, programs, software (including software code), ideas, know-how, work product, copyrights, patents, trade secrets and other proprietary and/or intellectual property shall remain the exclusive property of Consultant.

10. Confidentiality. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant specifically in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the

prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

11. 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.

12. 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.

13. Indemnification. Consultant (including its officials, officers, employees, agents, sub-consultants and contractors, collectively the "Indemnifying Party") shall, to the extent of its own willful, reckless or negligent misconduct, 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; and (ii) cooperating with Consultant in the defense of the claim.

14. 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.

15. 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 San Diego County.

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

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

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

or transfer. Notwithstanding the foregoing, the Parties agree that in the absence of a merger, the sale or transfer of all or substantially all of the shares of the Consultant shall not constitute an assignment or transfer of this Agreement.

20. 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.

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

22. 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.

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

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

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

[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

PACIFIC ENERGY ADVISORS, INC.[*]

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

ATTEST:

By : _____
Name: _____
Title: _____

Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

SDCP General Counsel

* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

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

EXHIBIT A

SERVICES/TERMS AND CONDITIONS

Consultant and SDCP agree that the following products and services (“**CCA Services**”) shall be provided by Consultant for the benefit of the SDCP under the terms and conditions as described herein. The services to be provided under this Schedule will commence upon execution of the Agreement.

Pacific Energy Advisors, Inc. (PEA) will provide consulting and technical services to San Diego Community Power (SDCP), supporting certain essential technical tasks related to the implementation (Task 1), operation (Task 2), and development and administration of a distributed energy resources (DER) procurement process (Task 3) for SDCP’s Community Choice Aggregation (CCA) program. Task-specific detail related to PEA’s scope of work is described below.

TASK 1: IMPLEMENTATION SUPPORT

The following services reflected under Task 1 address a variety of technical activities that will be necessary in supporting the successful implementation and launch of SDCP’s CCA program.

1) Pro Forma and Implementation Planning Updates

PEA will prepare a new operating pro forma for SDCP with current rate projections, power supply costs, and all other working assumptions. PEA will similarly prepare a forecast of power supply and other expenses as well as coordinate with SDCP management and accountants in supporting the development of SDCP’s annual (FY 2020/21) budget. Additionally, PEA will evaluate revised phasing strategies to optimize customer enrollment timing and cash flows. This also includes PEA’s in-person participation at SDCP to present the updated pro forma and discuss alternative phase-in approaches.

2) Supplier Selection and Contracting

Prior to serving customers, SDCP will need to secure requisite energy products and services, including shaped energy (i.e., a quantity of energy delivered by the supplier(s) according to an agreed upon schedule), resource adequacy capacity (i.e., reserve capacity required to meet mandatory compliance obligations for CCAs and other load serving entities), renewable energy and carbon-free energy (if applicable). For SDCP, such energy products and services will be procured through competitive solicitation processes utilizing qualified suppliers, which have agreed to previously negotiated terms and conditions for such transactions. PEA shall develop and complete the following key tasks in collaboration with SDCP related to supplier selection and contracting:

- Complete requisite data analysis for SDCP, as necessary to determine the customer energy quantities.
- Determine desired energy and capacity quantities, which would supply aggregate customer requirements, including anticipated participation in default and voluntary retail service options.
- Prepare necessary exhibits specifying energy and capacity product quantities to facilitate supplier bidding and related evaluations.
- Evaluate offers received in response to the aforementioned solicitation processes and assist CCA in selecting the preferred supplier(s) of such products and services.
- Support “go/no-go” decision to launch the program based on final power supply prices and then-current SDG&E retail electric rates.
- Perform necessary coordination activities with SDCP’s selected supplier(s), scheduling coordinator and data manager, as well as other related service providers (if necessary) during startup.

3) Regulatory Registrations and Compliance Systems

As a Load Serving Entity (LSE) within the state of California, SDCP will be required to comply with a variety of regulations, including participation in certain reporting programs administered by the California Public Utilities Commission (CPUC) and California Energy Commission (CEC). While some of these reporting programs will not be applicable until the second year of operation, other programs will require attention prior to service commencement or shortly thereafter. In particular, the annual electric load forecast (as it relates to future reserve capacity, also known as “resource adequacy,” compliance obligations), Western Renewable Energy Generation Information System (WREGIS) account registration, preparation of joint cost comparisons (a customer communication requirement created by SB 790) and preliminary power source disclosures will all require pre-launch completion. To ensure compliance with these requirements, PEA shall complete the following activities:

- Assist in identifying requisite resource adequacy (RA) capacity quantities that will need to be procured by CCA for purposes of demonstrating regulatory compliance.
- Assist in procuring requisite RA capacity from qualified suppliers.
- Prepare load forecast and related filings to ensure compliance with California’s RA program.

- Coordinate with designated SDCP staff to complete requisite registration materials for SDCP to become a WREGIS account holder – a WREGIS account will be necessary to track and report on renewable energy purchases for purposes of complying with California’s Renewables Portfolio Standard (RPS) program and substantiating procurement of renewable energy, generally speaking.
- To the extent such services aren’t provided by SDCP’s selected scheduling coordinator, PEA shall assist SDCP in becoming a candidate Congestion Revenue Rights (CRR) holder with the California Independent System Operator (CAISO) and will coordinate with SDCP’s scheduling coordinator to promote the successful completion of this process – CRRs may help mitigate certain financial risks and reduce costs associated with energy delivery within the CAISO market.
- Assist in ancillary CAISO setup activities, as required of California CCA programs.
- Assist in the preparation of requisite customer cost comparisons, as necessary.
- Assist in the preparation of statutorily required Joint Rate Comparison (JRC) in cooperation with SDG&E – the JRC provides CCA customers with comparative rate and power content details regarding available electric service options.
- Assist in completing SDCP’s RPS Procurement Plan, as required by the CPUC, relying on previously utilized document templates that have been developed for this purpose.
- Assist in completing SDCP’s annual RPS compliance reporting activities.
- Develop Integrated Resource Plan pursuant to CPUC requirements.

4) Rate Setting

Establishing initial customer rates will be a key task during the pre-startup phase. Such rates will be established in consideration of SDG&E’s then-effective rates schedules under which prospective customers currently receive electric service. Effective rate setting will ensure that SDCP’s program is financially sustainable and able to fulfill its financial obligations while remaining competitive with the incumbent utility. PEA shall develop and complete the following work items:

- Develop preliminary and final revenue requirements for the first year of program operation.
- Prepare preliminary and final rate schedules for the first year of program operation.
- Prepare a draft Net Energy Metering (NEM) tariff, including applicable tariff language and sample customer impact analyses.
- Prepare SDCP/SDG&E cost comparisons to ensure an understanding of anticipated customer cost impacts.

5) General Implementation Support

During the startup phase, there may be a need for technical support with regard to a variety of implementation activities. PEA will provide such support on an as-needed basis to SDCP, ensuring that sufficient expertise is available to address a broad range of potential needs. PEA's general support may include, but is not limited to the following:

- Coordination with staff, suppliers and other contractors to ensure effective program launch.
- Prepare for and participate in up to two (2) on-site meetings per month with SDCP leadership and/or staff, providing technical support during key discussions and decision making leading up to SDCP launch; PEA will be available to assist staff in preparing meeting materials and presenting such materials, as necessary. If additional meetings are deemed necessary by SDCP, PEA will coordinate with SDCP staff to identify mutually agreeable schedules for such meetings.
- Coordination with pertinent jurisdictional regulatory agencies: to the extent that jurisdictional regulatory agencies have questions regarding applicable reports/submittals and/or general questions regarding SDCP's operations, PEA would be available to address such inquiries and/or participate in related meetings or teleconferences.
- Coordination with key customers: PEA would be available to participate in discussions/meetings with key customer accounts, providing technical expertise related to rates, resource planning, power supply and anticipated environmental impacts.
- General as-needed advisory services.

TASK 2: ONGOING OPERATIONAL SUPPORT

The services described under Task 2 cover a variety of technical activities that will be necessary to support the initial and ongoing operation of SDCP's CCA program. Task-specific detail is described below.

1) Power Resources Management

Working with SDCP leadership as well as its designated Scheduling Coordinator, PEA will manage SDCP's power resources portfolio in accordance with its adopted policies and all applicable regulatory requirements. PEA will perform Front and Middle Office functions for SDCP encompassing the areas of resource planning, portfolio management, risk management, electric procurement, and the variety of regulatory compliance activities related to electric power supply. The following tasks are included in this service:

(a) Maintain Annual and Long-Term Sales Forecast:

- Prepare and maintain SDCP customer and electric sales forecasts, including: 1) monthly enrolled accounts, megawatt hours (MWh) and megawatts (MW) by load profile group; and 2) monthly coincident peak MW and hourly MW.
- Update long-term sales forecasts, as necessary, to maintain accuracy; monitor accuracy of load forecasts on a monthly basis; consider adjustments to such forecasts if observed variance exceeds threshold of 5% forecast error.

(b) Electric Supply Management:

- Develop and maintain load and resource balance models to identify incremental electric procurement needs in consideration of quantified open positions, SDCP resource and risk management policies, and applicable regulatory requirements; coordinate with management to develop and implement procurement strategies to address electric resource needs.
- Support procurement and/or sales of energy (e.g., system, RPS, and greenhouse-gas free) and capacity products including preparing requisite solicitation documents, participating in supplier/developer communications, providing analytical support during proposal/bid evaluation, negotiating commercial contract terms, and other related, as-needed activities.
- Annually, prepare and update internal resource plans, including ten-year load and resource projections, encompassing both supply and demand side resources.
- Develop Integrated Resource Plan pursuant to CPUC requirements.
- Review and validate periodic invoices received from SDCP's Scheduling Coordinator and electric suppliers to ensure charges are consistent with contract terms; bring any identified discrepancies to management's attention; and support attempts to resolve issues with counterparties.
- Monitor energy market activities, including pricing trends and forward curves related to market energy, renewable energy and capacity.
- Maintain/manage relationships with qualified suppliers of requisite energy products: participate in periodic calls, email exchanges and other communications with and/or on behalf of SDCP.

(c) Risk Management:

- Draft a Risk Policy that is tailored to SDCP's needs, focusing on information specific to SDCP's operations in order to make well-informed decisions and incorporating industry best practices.
- Draft Credit Guidelines that help shield SDCP from counter party credit risk while minimizing collateral postings.
- Determine the best methods and/or systems to aggregate positions, value positions, value risks, and establish the tolerance bands based upon SDCP's risk appetite. Prepare reports and review with SDCP's senior management at regularly scheduled Risk Oversight Committee meetings.
- Perform scenario analyses as needed, capturing the range of likely outcomes and the circumstances under which they could occur.

(d) Regulatory Compliance:

- Manage renewable energy portfolio per state/program standards; prepare RPS compliance filings and serve as SDCP's liaison with pertinent regulatory agencies for matters related to RPS compliance.
- Manage SDCP's WREGIS accounts and various subaccounts, including report preparation, certificate transfer review and retirement (to facilitate mandatory and regulatory compliance), as-needed generator registration (example: Feed-In Tariff projects under contract with SDCP) and other account management activities. Provide support during third-party audit processes, if applicable, including data gathering and analysis, reporting and liaison activities with SDCP's selected auditor and pertinent regulatory agencies.
- Manage RA portfolios per state/program standards; prepare year-ahead and month-ahead peak demand forecasts and resource adequacy compliance demonstration filings; coordinate with SDCP's Scheduling Coordinator and regulatory agencies to resolve any discrepancies that may arise during compliance review.
- Provide data analysis and assist in preparing reports related to the California's Power Source Disclosure Program, including technical elements of Power Content Label development and review; such support may also entail regulatory liaison activities required to successfully complete applicable reports.
- Prepare compliance filings pursuant to the CEC's biennial Integrated Energy Policy Report, Quarterly Fuels and Energy Report, and the U.S. Energy Information Agency monthly EIA-826 and annual EIA-861 reports.
- Prepare all required compliance documentation under this task and coordinate with SDCP's regulatory personnel or contractors, who will be responsible for formal submission of filings to the appropriate regulatory body.

2) Rate Setting, Financial Modeling & Performance Reporting

PEA will maintain a working pro forma financial model for SDCP use in budgeting, cash flow planning, financial performance monitoring, and SDG&E scenario analyses. PEA will design customer electric rates and update rates for approval by SDCP's governing board on an annual basis – such rates will be established at sufficient levels to meet adopted financial targets. PEA will provide technical rate support including monitoring SDG&E rate changes as they impact customer cost comparisons and also provide assistance with the preparation of joint cost comparison models. The following tasks are included as part of this service:

(a) Rate-setting

- Annually, develop proposed SDCP rate schedules; cost of service modeling; SDG&E benchmarking; billing determinant (e.g., Time of Use energy) forecast; present and proposed rate revenue forecast.

- Collaborate with staff, SDCP, and SDCP governing bodies, as necessary, in regard to rate changes, including necessary new rate designs or options.
- Provide support for the development and administration of certain CCA customer programs, including NEM, green energy, and Feed-In Tariffs, if desired by SDCP.
- Monitor realized rate revenue vs. projections to identify necessary rate changes.
- Monitor SDG&E rates and surcharges and assist SDCP with preparation of mandated joint cost comparisons reports.

(b) Financial Model (pro forma)

- Develop and maintain pro forma financial models of monthly income/expense projections, cash flow and cash balances.
- Update pro forma models as necessary to incorporate current load, resource and market data; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances.
- Prepare forecast of power supply and other expenses for annual budget.
- Prepare draft annual budget for the SDCP program in cooperation with SDCP management and accountants.
- As necessary, coordinate with SDCP and its financial advisors with regard to matters that may impact SDCP's financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.

(c) Performance monitoring and reporting

- Prepare monthly executive summary reports containing information on key program performance metrics related to enrolled customer accounts, customer opt-out rates, electricity sales volumes, revenues, comparisons to forecasts/budgets, comparisons to previous periods, and highlighting noteworthy operational insights.
- Monitor net open positions and provide monthly reporting of net open positions pursuant to adopted SDCP risk management policies.

TASK 3: DER ASSESSMENT AND PROCUREMENT

DERs must be effectively integrated into SDCP's resource planning and portfolio operations as well as considerate of program finances and related customer rates. PEA will work with SDCP in determining a DER procurement strategy and specifications related to DER program targets that align within SDCP's policy goals, risk preferences, and program finances. PEA will help develop and administer a DER procurement process, consistent with the aforementioned strategy. Related to DER procurement, PEA shall complete the following key tasks in collaboration with SDCP:

- Facilitate review and refinement of SDCP's DER ambitions in determining the volumetric targets.
- Quantify desired DER targets and implementation timelines, bid requirements and other solicitation parameters.
- Prepare draft solicitation materials, including related bid workbooks (which will provide an organized, uniform framework for bidder responses), to support the procurement of DERs.
- Assist SDCP (in cooperation with SDCP's designated legal counsel) in developing and finalizing form transaction documents – PEA anticipates that such transaction documents will rely heavily on similar documents previously utilized by other CCA organizations.
- Evaluate offers received in response to the aforementioned solicitation processes and assist SDCP in selecting the preferred supplier(s).
- In conjunction with the SDCP's designated legal counsel, support power purchase agreement completion.
- Assist SDCP in addressing any potential credit issues it may face during its contract negotiations.

Fee for Performance of Task 1 Services:

March 2020 – February 2021: \$19,250/month, not inclusive of direct travel costs

Fee for Performance of Task 2 Services:

March 2021 – March 2022: \$28,500/month, not inclusive of direct travel costs

SDCP shall have the option to extend the contract past March 2022 yearly at an annual escalation rate of 2%. If a multi-year agreement is put in place for Task 2 Services, meaning an agreement that extends from March 2021 through December 2023 (or beyond), PEA will waive the noted 2% annual escalation for such services.

Fee for Performance of Task 3 Services:

PEA will provide the services described in Task 3 on a time-and-materials basis. SDCP shall pay Contractor based on the following rate schedule:

Staff Name	Hourly Rate
John Dalessi	\$305
Kirby Dusel	\$295
Sam Kang	\$285
Brian Goldstein	\$280
Dona Stein	\$245
Alden Walden	\$165

Travel and related expenses will be billed monthly at cost with no markup. Examples of such expenses will likely include airfare, rental vehicles, airport parking and hotels (if meeting attendance is requested over a multi-day period). If desired, PEA will coordinate with SDCP in developing a mutually agreeable budget for such expenses – note that such budget would be additive to the monthly fees for services, as noted above, and may impact the frequency of travel by PEA to attend on-site meetings.

SAN DIEGO COMMUNITY POWER
Staff Report – Item 5

To: San Diego Community Power Board of Directors

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

Subject: Approve Agreement with LEAN Energy US for Ongoing Implementation Services

Date: February 27, 2020

Recommendation

Approve implementation services agreement with LEAN Energy US (LEAN), in an amount not to exceed \$75,000, for a one-year term retroactive to January 1, 2020 through December 31, 2020 with an option to extend.

Background

In June 2019 the City of San Diego initiated a contract with LEAN to support local government outreach, JPA development and early implementation planning for SDCP. That contract reached its budget cap and ended on December 31, 2019.

Analysis and Discussion

Staff is recommending that SDCP continue its relationship with LEAN Energy US for implementation support services for a term of one year, retroactive to January 1, 2020 through December 31, 2020 with an option to extend into 2021 if needed. LEAN's services include strategy support, program design and a variety of tasks focused on Agency start up, customer engagement, and general staff support.

The attached agreement was developed by BB&K, SDCP's general counsel, and includes a scope of work and description of fees/compensation for LEAN's ongoing work.

Fiscal Impact

The attached agreement includes a not to exceed cap of \$75,000 for the 2020 contract term. LEAN Energy has agreed to defer compensation while SDCP completes the steps necessary to fund its loan and establish banking operations.

Attachments

Attachment A: Agreement with LEAN Energy US including scope and final pricing

SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is made and entered into February 27, 2020 (“**Effective Date**”), by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“**SDCP**”) and **LEAN ENERGY US**, a California not for profit organization, (“**Consultant**”). SDCP and Consultant are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

RECITALS

A. Consultant desires to perform and assume responsibility for the provision of certain professional services required by SDCP on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing Community Choice Aggregation implementation and development services and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for ongoing Agency implementation and start-up services (“**Project**”) as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties hereby agree as follows:

1. Scope of Services and Term.

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

1.2 Term. The term of this Agreement shall be from the Effective Date to **December 31, 2020**, unless earlier terminated as provided herein, and shall include all Services performed by Consultant beginning January 1, 2020. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant 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.

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

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

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

Shawn Marshall, Executive Director
Alison Elliott, Administrative and Communications Coordinator

2.5 SDCP's Representative. SDCP hereby designates **[INSERT NAME OR TITLE]**, or his or her designee, to act as its representative for the performance of this Agreement ("SDCP's Representative"). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than SDCP's Representative, or designee.

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

2.7 Standard of Care; Performance of Employees. Consultant shall perform all

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

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

2.9 Insurance.

2.9.1 Time for Compliance. Consultant shall provide evidence satisfactory to SDCP that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SDCP. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to SDCP that the subcontractor has secured all insurance required under this section.

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

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

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

2.9.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of two (2) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

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

(A) General Liability.

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

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

(iii) The policy shall give SDCP, its directors, officials, officers,

employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

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

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

(C) Workers’ Compensation and Employers Liability Coverage.

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

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

(D) All Coverages. Defense costs shall be payable in addition to the limits set forth hereunder. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth herein shall be available to SDCP, its directors, officials, officers, employees and agents as additional insureds under said policies. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named insured; whichever is greater.

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SDCP (if agreed to in a written

contract or agreement) before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

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

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

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

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

(vi) Neither SDCP nor any of its directors, officials, officers, employees or agents shall be personally responsible for any liability arising under or by virtue of this Agreement.

2.9.5 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.

Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by SDCP.

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

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

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

3. Fees and Payments.

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit B, attached hereto. The total compensation shall not exceed \$75,000 without written approval of SDCP's Executive Officer, or designee. Extra Work may be authorized, as described below, and, if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized invoice which shall include all fees and authorized expenses related to Services during the previous month. SDCP shall, within 30 days of Consultant's invoice submittal, review the invoice and pay all approved charges thereon. In addition, Consultant shall be entitled to fees and authorized expenses incurred beginning January 1, 2020 through the Effective Date of this Agreement.

Consultant acknowledges that as of the Effective Date of this Agreement, SDCP is currently in the process of obtaining financing for SDCP operations. Notwithstanding the

fees and payments obligations in this Section 3, Consultant agrees that should SDCP not obtain financing for SDCP operations, Consultant will not be entitled to compensation from SDCP and waives any rights thereto.

3.3 Reimbursement for Expenses. For all authorized expenses, Consultant shall reflect such items, on an itemized basis, in its monthly invoices as noted in Section 3.2.

3.4 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.

4. Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of SDCP during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

5. General Provisions.

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. SDCP may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least fourteen (14) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and Consultant shall be entitled to no further compensation. Consultant may also terminate this agreement for cause upon thirty (30) days written notice to SDCP.

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

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

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

Consultant: LEAN Energy US
Attn: Shawn Marshall, Executive Director
P.O. Box 961
Mill Valley, CA 94941

SDCP: San Diego Community Power
Attn: Executive Officer
c/o City of San Diego Sustainability Department
1200 Third Avenue, Suite 1800
San Diego, CA 92101

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

5.3 Ownership of Materials and Confidentiality.

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

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

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

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

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

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

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

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

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

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

reasonable attorney's fees and all other costs of such action.

5.6 Indemnification.

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

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

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

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

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

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

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

assignment, hypothecation or transfer.

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

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

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

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

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

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

5.19 Equal Opportunity Employment. 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.

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

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

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

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

[SIGNATURES ON FOLLOWING PAGE]

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

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

SAN DIEGO COMMUNITY POWER

LEAN ENERGY US

By : _____
Name: _____
Title: _____



Name: Shawn Marshall
Title: Executive Director

ATTEST:

Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

SDCP General Counsel

EXHIBIT A

SCOPE OF SERVICES

The following scope of work (SOW) continues the work that LEAN has been performing on behalf of San Diego Community Power (SDCP) under a previous contract with the City of San Diego that ended on December 31, 2019. Tasks are itemized within two task areas to support SDCP's ongoing implementation and start-up activities throughout calendar year 2020.

Task 1: SDCP Planning and Organizational Development

- 1.a Coordinate/participate in weekly SDCP team calls and other communications to support project management, decision-making, and completion of various action items.
- 1.b Provide advice and strategy in all areas of Agency and program formation, leveraging existing CCE relationships, best practices and lessons-learned from previous CCE launch experience.
- 1.c Support staff in preparation of Board meeting agendas, staff reports, strategic research, and other Board documents as may be needed.
- 1.d Draft SDCP policies for executive officer and Board consideration; review draft bylaws or operating guidelines as may be needed.
- 1.e Support SDCP's initial strategic planning process
- 1.f Assist staff with development of vendor RFPs including power services, data management/call center, marketing and others as may be needed; assist with bid evaluation, vendor selection and contracting process if desired.
- 1.g Support CEO recruitment and his/her on-boarding to include: identification of executive search firm and contract preparation; preparation of CEO job description, resume/candidate review, design and assist with interview process, and other tasks necessary to successfully on-board a permanent CEO.
- 1.h Help with Agency staffing plan, draft job descriptions, support recruitment and candidate selection process for additional staff as needed.
- 1.i Liaison with selected data management/call center vendor to support design of back office systems, call center/IVR playbook, and customer enrollment process.
- 1.j Review and/or provide input on FY 2020-2021 operational budget; solicit and identify independent accounting support as needed.
- 1.k Prepare utility service agreement and CPUC financial security agreement for review by CEO and adoption by the Board
- 1.l Complete any other tasks or projects as may be required to support the successful launch of SDCP in 2021.

Task 2: Marketing and Community Engagement

LEAN will support SDCP's communication efforts in the following ways:

- 2.a Support creation of the Agency's Community Advisory Committee including document review and agenda planning if needed.
- 2.b Content development and design of an informational website (website 1.0) that can evolve into SDCP's full website (website 2.0) with interactive customer functions.
- 2.c Draft and/or review RFP for Marketing & Communication Services, support bid evaluation, contracting and on-boarding process.
- 2.d Assist with stakeholder mapping and development of a database/list-serve to be used for future e-mail communications.
- 2.e Support development of the marketing and public outreach workplan, key messaging and design review, timeline and advertising plan for public engagement and customer enrollment. This could include content feedback for website 2.0, program collateral, informational videos, program terms and conditions and review of direct mail customer notifications.
- 2.f Support development of key account outreach strategy, collateral development and commercial customer retention.
- 2.g Provide strategy support to respond to any challenging public engagement issues that may arise throughout the implementation process.

EXHIBIT B

2020 COMPENSATION AND BILLING RATES

<u>Name</u>	<u>Title</u>	<u>Hourly Rate</u>
Shawn Marshall	Executive Director	\$170.00
Alison Elliott	Administrative/Communications	\$65.00 (Admin)/\$100 (Web design)
Project Manager	(if needed)	\$140.00

These rates include all indirect expenses such as office expense, insurance, communications, supplies, et al. They do not include travel and other out of pocket expenses such as printing or website design.

LEAN's work is offered on a time and materials basis within a not-to-exceed budget cap of \$75,000 through the contract period. Hours and expenses will be billed monthly and Client will be notified well in advance if the project is approaching the budget cap.

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

Subject: Approve San Diego Cooperation and Administrative Services Agreement

Date: February 27, 2020

Recommendation

Approve the Cooperation and Administrative Services Agreement with City of San Diego (City), providing certain services to San Diego Community Power (SDCP) by the City and reimbursement to the City of these services.

Background

Since 2016, the City of San Diego has been actively investigating the feasibility of commencing a Community Choice Aggregation Program in order to meet the 100 percent renewable energy goal in its Climate Action Plan.

On October 1, 2019, the City of San Diego joined the cities of Chula Vista, Encinitas, Imperial Beach, and La Mesa in the formation of San Diego Community Power, a California Joint Powers Authority (JPA), with the goal of launching community choice aggregator (CCA) service in Spring 2021. There are a myriad of administrative actions and expenditures that have been and will continue to be necessary in the to move SDCP from its initial concept, through launch, to a fully functioning, independent Authority serving over 900,000 customers.

Launching SDCP includes the following activities:

1. Creation of a Joint Powers Authority composed of participating municipalities;
2. Retention of experts to assist with energy and technical services, including development of an Implementation Plan, calculating the precise energy needs of SDCP according to its own policy, regulatory affairs, community outreach, assisting with contracts to bring energy service providers on board, and numerous other tasks;
3. City staff support for all administrative services and coordination among the various consultant teams being hired.

For items 1-3, the City of San Diego allocated approximately \$350,000 since December 2018 when regional discussions began to help bring SDCP to full operations status. This value does not include the “soft” costs resulting from staff time supporting SDCP formation and launch, which is currently estimated at \$300,000 to-date.

The Cooperation and Administrative Services formalizes the ongoing relationship between City of San Diego and SDCP, provided that the City will provide – through officers, employees, consultants, or contractors – a variety of services to SDCP, including but not limited to the following:

- a) Fiscal management and SDCP credit and financing support, including financial advisory, banking, and treasurer services;
- b) Community outreach;
- c) Contracted general start-up consulting support, including organizational operations;
- d) Staff support and administrative support at meetings;
- e) Legal counsel;
- f) Contracted technical and energy services;
- g) General administrative staff support for day-to-day operations.

This list is non-exhaustive and additional services may be provided at the direction of the SDCP Board.

The Cooperation Agreement does not require the City to budget any additional funds for SDCP beyond Fiscal Year 2020, or to provide any services or advance any funds; rather, it allows the City to continue to provide such services and provides for reimbursement of City expenditures.

The Cooperation Agreement will act retroactively and entitle the City to reimbursement of expenditures going back to December 2018.

The City will maintain records of all services undertaken and funds advanced for SDCP and invoice SDCP on a quarterly basis. Pursuant to this Agreement, SDCP agrees to reimburse the City for all costs incurred for the services outlined in the Agreement and any other expenditures made in order to implement the CCA Program. Total expenditures are not to exceed \$1.5 million pursuant to the Agreement. These amounts shall be repaid by SDCP to the City with 2% interest per annum. Payment may occur over time, consistent with SDCP's financial ability, however all costs must be repaid by the earlier of 5 years from CCA formation or 2 years after initial loans/lines of credit are repaid.

Staff is recommending that the Board approve the Cooperation and Administrative Services Agreement, which would then be presented to the City Council of San Diego for approval and final execution.

Fiscal Impact

The Cooperation Agreement allows SDCP to continue to rely on City services until such time as it can finance its own operations. It requires SDCP to reimburse the City's costs retroactively to December 2018 as well as ongoing costs, at 2% interest, which will be done from the charges collected from customers and/or seed funding received as part of its credit package, as SDCP is financially able to do so.

Attachments

Attachment A: SDCP and City of San Diego Cooperation and Administrative Services Agreement

COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

THIS COOPERATION AGREEMENT is entered into as of _____, 2020, by and between SAN DIEGO COMMUNITY POWER (“**SDCP**”) and the CITY OF SAN DIEGO (the “**City**”) and shall become effective upon the terms set forth herein. SDGP and the City are sometimes referred to in this Agreement individually as a “**Party**,” or collectively as “**Parties**.”

RECITALS

A. The City Council of the City of San Diego, by Ordinance No. 21133, adopted on October 1 2019, and the City Council of the City of Chula Vista, by Ordinance No. 3463, adopted on September 24, 2019, and The City Council of the City of Encinitas, by Ordinance No. 2019-18 adopted on September 18, 2019, and The City Council of the City of La Mesa, by Ordinance No. 2019-2871, adopted on September 24, 2019, and The City Council of the City of Imperial Beach, by Ordinance No. 2019-1187, adopted on October 2, 2019, and authorized the implementation of a Community Choice Aggregation Program through a Community Choice Energy Program (“**CCE Program**”) to be operated by the San Diego Regional Community Choice Energy Authority (“**SDRCCEA**”), pursuant to California Public Utilities Code Section 366.2(c)(12).

B. The City Council of the City of San Diego, by Resolution No. 312666, adopted on September 17, 2019, and the City Council of the City of Chula Vista, by Resolution No. 2019-179, adopted on September 10, 2019, and the City Council of the City of Encinitas, by Resolution No. 2019-80 adopted on September 11, 2019, and the City Council of the City of La Mesa, by Resolution No. 2019-088, adopted on September 10, 2019, and the City Council of the City of Imperial Beach, by Resolution No. 2019-8087, adopted on September 18, 2019, authorized the City and County, respectively, to enter into a Joint Powers Agreement Relating to and Creating the San Diego Regional Community Choice Energy Authority (the “**JPA Agreement**”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “**Act**”).

C. The Board of Directors of the San Diego Regional Community Choice Energy Authority, by Resolution No. 2020-01, adopted on November 21, 2019, amended the JPA Agreement to change the name of the Authority from “San Diego Regional Community Choice Energy Authority” to “San Diego Community Power”.

D. Section 3.2.9 of the JPA Agreement authorizes the SDGP to make and enter into contracts and accept loans or other aids from any federal, state or local public agency. Section 3.2.13 of the JPA Agreement authorizes the SDGP to enter into an Administrative Services Agreement with the City and County for the provision of administrative services to the SDGP.

E. Section 7.3.2 of the JPA Agreement acknowledges that the City of San Diego has funded and will fund certain activities necessary to implement the CCE Program, and if the CCE Program becomes operational, the costs paid by the City shall be reimbursed from the payment of such charges by customers of SDGP.

F. The SDCP and City desire to enter into this Agreement for the following purposes:

(1) To set forth activities, services and facilities that the City has rendered and will render for and make available to the SDCP in furtherance of the activities and functions of the SDCP under the JPA Agreement and in furtherance of the CCE Program; and

(2) To provide that the SDCP will reimburse the City for past and future actions undertaken, and costs and expenses incurred by the City for and on behalf of the SDCP.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The City agrees to provide for the SDCP such staff assistance, supplies, technical services and other services and facilities of the City as the SDCP may request from time to time in carrying out its functions under the JPA Agreement and in furtherance of the CCA Program. Such assistance and services shall include, but not be limited to: (a) Fiscal management and SDCP credit and financing support, including financial advisory, banking, and treasurer services; (b) Community outreach; (c) contracted general start up consulting support, including organizational operations; (d) Staff support and administrative support at meetings; (e) legal counsel; (f) contracted technical and energy services; and (g) general administrative staff support for day-to-day operations. These services may be provided by officers, employees, or special consultants or contractors of the City.

2. The City agrees to advance necessary funds to the SDCP or expend funds on behalf of the SDCP for the implementation of the JPA Agreement and the CCE Program, including, but not limited to, the costs of preparation of an Implementation Plan, and the planning, studies and environmental assessments for the implementation of the CCA Program and the costs of retaining independent service providers and SDCP staff.

3. The City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof so that an accurate determination of the SDCP's liability to the City can be made. The City shall provide a quarterly report to the SDCP providing a breakdown of the costs and expenses incurred by the City in rendering activities and services of the City to or on behalf of the SDCP pursuant to this Agreement, together with documentation satisfactory to the SDCP of such costs. Such statement of costs may include the City's administrative and salary expense attributable to services of City officials, employees and departments rendered for the SDCP.

4. The SDCP agrees to reimburse the City for all costs incurred for services by the City pursuant to this Agreement, including costs incurred retroactive to the date of this Agreement, from and to the extent that funds are available to the SDCP from charges to CCA customers receiving electric services from the SDCP, seed funding received as part of its credit package, and/or from revenues from grants or other third-party sources; provided, however, that the SDCP shall have the sole and exclusive right to pledge any such sources of funds to the repayment of other indebtedness incurred by the SDCP in implementing the CCA Program. The costs of the City under this

Agreement will be shown on statements submitted to the SDCP pursuant to Section 3 above. Although the Parties recognize that payment may not occur for a few years and that repayment may also occur over a period of time, it is the express intent of the parties that the City shall be entitled to repayment of the expenses incurred by the City under this Agreement, consistent with the SDCP's financial ability, in order to make the City whole as soon as practically possible and no later than the earlier of five (5) years after SDCP formation date or two (2) years after initial loans/lines of credit are repaid.

5. The SDCP may enter into similar Cooperation and Administrative Services Agreements with one or more Founding Member Cities that provides for reimbursement to the Member City for any costs and funds advanced to or on behalf of the SDCP by the Member City, and that this Agreement would have priority over any such agreement with another Member City for reimbursement entered into after the date of this Agreement.

6. The City shall be reimbursed for costs described in this Agreement incurred by City, in a total amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00), to assist with funding of Initial Costs as referenced in Section 7.3.2 of the JPA Agreement. Said amount shall be deemed the initial amount owed by SDCP under this Agreement, and further costs incurred by the City, or funding provided to SDCP, pursuant to this Agreement shall be added to such amount, as incurred from time to time, and reimbursement shall include the interest rate set forth in Section 15 below.

7. The City agrees to perform all services required by this Agreement in a manner commensurate with the standards of a reasonable professional having knowledge and expertise in the services provided under this Agreement.

8. Under no circumstances shall the employees of City be considered employees of the SDCP, nor shall employees of the SDCP be considered employees of the City. The City shall be solely responsible and liable for paying all compensation and benefits owed to its employees for the service provided by the City under this Agreement.

9. The SDCP 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 JPA Agreement, and is a public entity separate from its constituent members. The SDCP shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. The City shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the SDCP's constituent members in connection with this Agreement.

10. Each party shall defend, indemnify and hold harmless the other party (including its officers, employees and agents) against any claim, loss or liability arising out of the performance of this Agreement by such party. Nothing contained herein shall be construed as a waiver of any immunities or defenses that a party may have under applicable provisions of the law, including the provisions of the California Tort Claims Act (Government Code Section 801 et seq.). This mutual indemnification agreement is adopted pursuant to Government Code Section 895.4 and in lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6. This provision shall survive expiration or termination of this Agreement.

11. The City shall make all documentation and records concerning all services performed under this Agreement available to the SDCP for inspection and copying at any reasonable time. The City shall maintain such records for a period of three (3) years following completion of work hereunder.

12. Either party may terminate this Agreement by providing no less than sixty calendar (60) days written notice to the other party. The SDCP shall pay the City for services performed up to the effective date of termination; provided, however, that the terms and conditions set forth in Sections 5 and 6 of this Agreement shall continue in effect following such termination until all amounts due and owing the City hereunder have been repaid in full. For purposes of Section 7.3.2 of the Joint Powers Agreement, the execution of this reimbursement agreement is documentation that SDCP has become operational on or before the effective date of this Agreement.

13. In the event of termination, the City, within thirty calendar (30) days following the date of termination, shall deliver to the authority all records and work products generated by the City under this Agreement.

14. This Agreement and obligations of the parties hereunder are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successor of those authorities). Any suits brought pursuant to this Agreement shall be filed in the Superior Court of the County of San Diego, State of California. A waiver by any party of any breach of any term, covenant, or conditions contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or conditions contained herein, whether of the same or a different character.

15. The obligations of the City hereunder shall constitute a contribution, payment and advance of funds, and use of personnel, equipment and property as authorized under Government Code Section 6504, to be repaid to the City by the SDCP as authorized under Government Code Section 6512.1, plus two percent (2%) per annum.

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

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: Formation and Appointment of the Finance and Risk Management Committee

Date: February 27, 2020

Recommendation

Establish the Finance and Risk Management Committee and appoint two Board Members to serve on the Finance and Risk Management Committee until December 2020.

Background

Section 5.10.2 of the SDCP Joint Powers Authority (JPA) Agreement provides as follows:

The Board shall establish a finance and risk management committee consisting of a subset of its Directors. The primary purpose of the finance and risk management committee is to review and recommend to the Board:

- a) A funding plan;
- b) A fiscal year budget;
- c) Financial policies and procedures to ensure equitable contributions by Parties; and
- d) The Finance and Risk Management Committee may have such other responsibilities as may be approved by the Board, including but not limited to advising the Chief Executive Officer on fiscal and risk management policies and procedures, rules and regulations governing investment of surplus funds, audits to achieve best practices in corporate governance and selection and designation of financial institutions for deposit of Authority funds, and credit/depository matters.

Analysis and Discussion

At its January Board meeting, the Board discussed the formation of the Finance and Risk Management Committee and the potential for alternate Directors to serve on the committee, as well as other standing committees.

As stated above, Section 5.10.2 of the JPA Agreement provides that the Finance and Risk Management Committee will be composed of a subset of the Directors. However, alternate Directors may attend and participate fully in committees when the primary Directors are not present. Accordingly, staff recommends that the Board establish the Finance and Risk Management Committee and appoint two (2) Directors to the committee. The appointed

Directors may attend committee meetings themselves, or request that their alternates regularly attend Committee meetings on their behalf.

Committee members shall serve until the December 2020 meeting. At that December meeting, the Board may appoint or reappoint Directors for the following year. All Finance and Risk Management Committee meetings will be subject to Brown Act noticing and open meeting requirements, including the location information.

Staff anticipates that the Finance and Risk Management Committee will meet monthly, or as needed. Staff assistance will be provided in determining the best time and location to meet.

Fiscal Impact

Cost of this action may include staff time to manage the meetings and a cost for meeting space to host the meetings.