

San Diego Community Power

- Joint Powers Agreement –

Amended and Restated Effective December 16, 2021

Previous Versions/Amendments:

Original Agreement Effective October 1, 2019

First Amendment Effective November 22, 2019

SAN DIEGO COMMUNITY POWER

JOINT POWERS AGREEMENT

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

RECITALS

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

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

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

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

AGREEMENT

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

1. DEFINITIONS AND EXHIBITS

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

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

2. FORMATION OF SAN DIEGO COMMUNITY POWER

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

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

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

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

3. **POWERS**

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

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

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

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

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

4. GOVERNANCE

4.1 **Board of Directors.**

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

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

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

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

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

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

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

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

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

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

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

4.12 Special Voting.

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

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

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

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

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

5. INTERNAL ORGANIZATION

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

5.2 **Chair and Vice Chair.** At its first meeting of each calendar year, the Board shall elect a Chair and Vice Chair from among the Directors. The term of office of the Chair and Vice Chair shall continue for one year or until a successor is elected, but there shall be no limit on the number of terms held by either the Chair or Vice Chair. The Chair shall be the presiding officer of all Board meetings, and the Vice Chair shall serve in the absence of the Chair. The Chair shall perform duties as may be imposed by the Board. In the absence of the Chair, the Vice-Chair shall perform all of the Chair's duties. The office of the Chair or Vice Chair shall be declared vacant and a new selection shall be made if: (a) the person serving dies, resigns, or the Party that the person represents removes the person as its representative on the Board, or (b) the Party that he or she represents withdraws from SDCP pursuant to the provisions of this Agreement. Upon a vacancy, the position shall be filled at the next regular meeting of the Board held after such vacancy occurs or as soon as practicable thereafter. Succeeding officers shall perform the duties normal to said offices.

5.3 **Secretary.** The Board shall appoint a qualified person who is not on the Board to serve as Secretary. The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other office records of SDCP. If the appointed

Secretary is an employee of any Party, such Party shall be entitled to reimbursement for any documented out of pocket costs it incurs in connection with such employee's service as Secretary of SDCP, and full cost recovery for any documented hours of service provided by such employee during such Party's normal working hours.

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

established by the Board, and shall require such public officer or officers or person or persons to file an official bond in an amount to be fixed by the Board.

- 5.8 **Other Employees/Agents.** The Board shall have the power by resolution to hire employees or appoint or retain such other agents, including officers, loan-out employees, or independent contractors, as may be necessary or desirable to carry-out the purpose of this Agreement, pursuant to terms and conditions adopted by the Board.
- 5.9 **Privileges and Immunities from Liability.** All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activities of officers, agents or employees of a public agency when performing their respective functions shall apply to the officers, agents or employees of SDCP to the same degree and extent while engaged in the performance of any of the functions and other duties of such officers, agents or employees under this Agreement. None of the officers, agents or employees directly employed by the Board shall be deemed, by reason of their employment by SDCP to be employed by the Parties or by reason of their employment by SDCP, to be subject to any of the requirements of the Parties.
- 5.10 **Commissions, Boards and Committees.** The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, related energy programs, and the provisions of this Agreement. To the extent possible, the commissions, boards, and committees should have equal representation from each Party. The Board may establish criteria to qualify for appointment on said commissions, boards, and committees. The Board may establish rules, regulations, policies, or procedures to govern any such commissions, boards, or committees and shall determine whether members shall be compensated or entitled to reimbursement for expenses.
- 5.10.1 **Executive Committee.** The Board may establish an executive committee consisting of a subset of its Directors. The Board may delegate to the Executive Committee such authority as the Board might determine appropriate to serve as a liaison between the Board and the Chief Executive Officer and to make recommendations to the Board regarding the operations of SDCP. Notwithstanding the foregoing, the Board may not delegate authority regarding essential Board functions, including but not limited to, approving the fiscal year budget or hiring or firing the Chief Executive Officer, and other functions as provided in SDCP bylaws or policies. Further, the Board may not delegate to the Executive Committee, or any other committee, the Board's authority under Section 3.2.12 to adopt and amend SDCP policies and procedures.

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

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

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

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

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

5.10.5 Meetings of the Advisory Committees. All meetings of the committees shall be held in accordance with the Brown Act. For the purposes of convening meetings and conducting business, unless otherwise provided

in the bylaws, a majority of the members of the committee shall constitute a quorum for the transaction of business, except that less than a quorum or the secretary of each committee may adjourn meetings from time-to-time. As soon as practicable, but no later than the time of posting, the Secretary of the committee shall provide notice and the agenda to each Party, Director(s), and Alternate Director(s).

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

6. IMPLEMENTATION ACTION AND AUTHORITY DOCUMENTS

6.1 Preliminary Implementation of the CCA Program.

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

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

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

6.3 **Integrated Resource Plan and Regulatory Compliance.** SDCP shall cause to be prepared an Integrated Resource Plan in accordance with California Public Utilities Commission regulations, and consistent with the terms of this Agreement, that will ensure the long-term development and administration of a variety of energy programs that promote local renewable resources, conservation, demand response, and energy efficiency, while maintaining compliance with other regulatory requirements including the State Renewables Portfolio Standard (RPS) and customer rate competitiveness. SDCP shall prioritize the development of cost competitive clean energy projects in San Diego and adjacent counties.

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

7. **FINANCIAL PROVISIONS**

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

7.2 **Depository.**

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

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

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

7.3 **Budget and Recovery Costs.**

- 7.3.1 **Budget.** The initial budget shall be approved by the Board. The Board may revise the budget from time to time as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets of SDCP shall be prepared and approved by the Board in accordance with its fiscal management policies that should include a deadline for approval.

7.3.2 **Funding of Initial Costs.**

- (a) The City of San Diego shall fund the Initial Costs of establishing SDCP and implementing its CCA Program. In the event that the

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

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

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

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

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

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

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

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

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

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

8. WITHDRAWAL AND TERMINATION

8.1 **Withdrawal**

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

- 8.1.2 **Amendment.** Notwithstanding Section 8.1.1 (Withdrawal by Parties) of this Agreement, a Party may withdraw its membership in SDCP upon approval and execution of an amendment to this Agreement provided that the requirements of this Section 8.1.2 are strictly followed. A Party shall be deemed to have withdrawn its membership in SDCP effective 180 days after the Board approves an amendment to this Agreement if the Director representing such Party has provided notice to the other Directors immediately preceding the Board's vote of the Party's intention to withdraw its membership in SDCP should the amendment be approved by the Board.
- 8.1.3 **Continuing Liability; Further Assurances.** A Party that withdraws its membership in SDCP may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement, including, but not limited to, power purchase agreements and other SDCP contracts and operational obligations. The withdrawing Party and SDCP shall execute and deliver all further instruments and documents and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Party from membership in SDCP. The Board shall also consider, pursuant to Section 3.2.12, adoption of a policy that allows a withdrawing Party to negotiate assignment to the Party of costs of electric power or other resources procured on behalf of its customers by SDCP upon its withdrawal. SDCP's policies shall prescribe the rights if any of a withdrawn Party to continue to participate in those Board discussions and decisions affecting customers of the CCA Program that reside or do business within the jurisdiction of the Party. In the implementation of this Section 8.1.3, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing SDCP operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.
- 8.2 **Termination of CCA Program.** Nothing contained in Section 6 or elsewhere in this Agreement shall be construed to limit the discretion of SDCP to terminate the implementation or operation of the CCA Program at any time in accordance with any applicable requirements of state law.
- 8.3 **Involuntary Termination.** This Agreement may be terminated with respect to a Party for material non-compliance with provisions of this Agreement or SDCP documents upon a two-thirds vote of the Board in which the minimum Equal Vote or Voting Shares Vote, as applicable in Section 4.11 (Board Voting) of this Agreement, shall be no less than two-thirds vote excluding the vote and voting shares of the Party subject to possible termination. Prior to any vote to terminate

this Agreement with respect to a Party, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Party whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or SDCP Documents that the Party has allegedly violated. The Party subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Party that has had its membership in SDCP terminated may be subject to certain continuing liabilities, as described in Section 8.5 (Continuing Liability; Refund) of this Agreement.

- 8.4 **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Parties; provided, however, the foregoing shall not be construed as limiting the rights of a Party to withdraw its membership in SDCP, and thus terminate this Agreement with respect to such withdrawing Party, as described in Section 8.1 (Withdrawal) of this Agreement.
- 8.5 **Continuing Liability; Refund.** Upon a withdrawal or involuntary termination of a Party, the Party shall remain responsible for any claims, demands, damages, or liabilities arising from the Party's membership in SDCP through the effective date of its withdrawal or involuntary termination, it being agreed that the Party shall not be responsible for any claims, demands, damages, or liabilities commencing or arising after the date of the Party's withdrawal or involuntary termination. In addition, such Party also shall be responsible for (a) any damages, losses, or costs incurred by SDCP which result directly from the Party's withdrawal or termination, including but not limited to costs arising from the resale of capacity, electricity, or any attribute thereof no longer needed to serve such Party's load; and (b) any costs or obligations associated with the Party's customer participation in any program in accordance with the program's terms, provided such costs or obligations were incurred prior to the withdrawal of the Party. The withdrawing Party agrees to pay any such deposit determined by SDCP to cover the Party's liability for the operational and contract costs described above. Any amount of the Party's funds held on deposit with SDCP above that which is required to pay any liabilities or obligations shall be returned to the Party. In the implementation of this Section 8.5, the Parties intend, to the maximum extent possible, without compromising the viability of ongoing SDCP operations, that any claims, demands, damages, or liabilities covered hereunder, be funded from the rates paid by CCA Program customers located within the service territory of the withdrawing Party, and not from the general fund of the withdrawing Party itself.
- 8.6 **Disposition of SDCP Assets.** Upon termination of this Agreement and dissolution of SDCP by all Parties, and after payment of all obligations of SDCP, the Board

8.6.1 May sell or liquidate SDCP property; and

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

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

9. MISCELLANEOUS PROVISIONS

- 9.1 **Dispute Resolution.** The Parties and SDCP shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Before exercising any remedy provided by law, a Party or the Parties and SDCP shall engage in nonbinding mediation in the manner agreed upon by the Party or Parties and SDCP. The Parties agree that each Party may specifically enforce this section. In the event that nonbinding mediation is not initiated or does not result in the settlement of a dispute within 60 days after the demand for mediation is made, any Party and SDCP may pursue any remedies provided by law.
- 9.2 **Liability of Directors, Officers, and Employees.** The Directors, officers, and employees of SDCP shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. No current or former Director, officer, or employee will be responsible for any act or omission by another Director, officer, or employee. SDCP shall defend, indemnify and hold harmless the individual current and former Directors, officers, and employees for any acts or omissions in the scope of their employment or duties in the manner provided by Government Code Section 995 et seq. Nothing in this section shall be construed to limit the defenses available under the law, to the Parties, SDCP, or its Directors, officers, or employees.
- 9.3 **Indemnification of Parties.** SDCP shall acquire such insurance coverage as is necessary to protect the interests of SDCP, the Parties and the public. SDCP shall defend, indemnify and hold harmless the Parties and each of their respective governing board members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts and omissions of SDCP.
- 9.4 **Notices.** Any notice required or permitted to be made hereunder shall be in writing and shall be delivered in the manner prescribed herein at the principal place of business of each Party. The Parties may give notice by (1) personal delivery; (2) e-mail; (3) U.S. Mail, first class postage prepaid, or a faster delivery method; or (3) by any other method deemed appropriate by the Board.

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

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

- 9.5 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the successors of each Party.
- 9.6 **Assignment.** Except as otherwise expressly provided in this Agreement, the rights and duties of the Parties may not be assigned or delegated without the advance written consent of all of the other Parties, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties. This section does not prohibit a Party from entering into an independent agreement with another agency, person, or entity regarding the financing of that Party’s contributions to SDCP, or the disposition of the proceeds which that Party receives under this Agreement, so long as such independent agreement does not affect, or purport to affect, the rights and duties of SDCP or the Parties under this Agreement.
- 9.7 **Severability.** If any one or more of the terms, provisions, promises, covenants, or conditions of this Agreement were adjudged invalid or void by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.
- 9.8 **Governing Law.** This Agreement is made and to be performed in the State of California, and as such California substantive and procedural law shall apply.
- 9.9 **Headings.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language of this Agreement.
- 9.10 **Counterparts.** This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

APPROVAL OF JOINT POWERS AGREEMENT AS AMENDED AND RESTATED

By Resolution No. 07 of the Board of Directors of San Diego Community Power, this Joint Powers Agreement was amended and restated in accordance with Section 4.12.2(c) of the Agreement, effective as of December 16, 2021.

By: Joseph Murch
Chair, Board of Directors
San Diego Community Power

ATTEST:

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

APPROVED AS TO FORM:

By: Ryan M. F. Baron
General Counsel
San Diego Community Power

Exhibit A: Definitions

- “AB 117” means Assembly Bill 117 (Stat. 2002, Ch. 838, codified at Public Utilities Code Section 366.2), which created Community Choice Aggregation.
- “Act” means the Joint Exercise of Powers Act of the State of California (Chapter 5, Division 7, Title 1 of the Government Code commencing with Section 6500).
- “Agreement” means this Joint Powers Agreement, as amended from time to time.
- “Board” means the Board of Directors of SDCP.
- “Community Choice Aggregation” or “CCA” means an electric service option available to cities, counties, and other public agencies pursuant to Public Utilities Code Section 366.2.
- “CCA Program” means SDCP’s program relating to CCA that is principally described in Section 2.3 (Purpose) of this Agreement.
- “Days” shall mean calendar days unless otherwise specified by this Agreement.
- “Director” means a member of the Board representing a Party, including up to two alternate Directors appointed in accordance with Sections 4.1 (Board of Directors) and 4.2 (Appointment and Removal of Directors) of this Agreement.
- “Effective Date” means October 1, 2019, as further described in Section 2.1 (Effective Date and Term) of this Agreement.
- “Founding Member” means any jurisdiction that joins with the City of San Diego to form SDCP in 2019, as identified in Exhibit B. Founding members shall not incur any expenses related to their membership in SDCP or its operational implementation.
- “Governing Body” means: for the County of San Diego, its Board of Supervisors; for any city other than San Diego, its City Council; for San Diego, the Mayor and the City Council; and, for any other public agency, the equivalent policy making body that exercises ultimate decision-making authority over such agency.
- “Initial Costs” means implementation costs advanced by the City of San Diego and other Founding Members in support of the formation of SDCP, which are (a) directly related to the establishment of SDCP and its CCA program, and (b) incurred by SDCP or its Members relating to the initial operation of SDCP, such as the hiring of the executive and operations staff, any required accounting, administrative, technical and legal services in support of SDCP’s initial formation activities or in support of the negotiation, preparation and approval of power purchase agreements. Initial Costs do not include costs associated with the investigation of the CCA model, attendance at routine planning meetings, or a Party’s pre-formation reports related to their decision to pursue CCA or join SDCP. The SDCP Board shall determine the repayment timing and termination date for the Initial Costs.

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

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

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

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

“SDCP” means San Diego Community Power.

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

Exhibit B: List of Founding Members

City of San Diego

City of Chula Vista

City of Encinitas

City of La Mesa

City of Imperial Beach

Exhibit C: Annual Energy Use by Jurisdiction

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

* 2018 data provided by SDG&E

**2017 data provided by SDG&E

Exhibit D: Voting Shares of Founding Members

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

* 2018 data provided by SDG&E

**2017 data provided by SDG&E

Exhibit E: Signature Pages of Founding Members on Original Agreement

Exhibit F: Signature Pages of Additional Parties

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

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

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

[NEW MEMBER]

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

ATTEST:

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____

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

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AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History



SENT

12 / 17 / 2021

18:25:11 UTC

Sent for signature to Joe Mosca (jmosca@encinitasca.gov), Ryan Baron (ryan.baron@bbklaw.com) and Megan Wiegelman (mwiegelman@cityoflamesa.us) from kiskey@sdcommunitypower.org
IP: 68.6.212.247



VIEWED

12 / 17 / 2021

18:30:26 UTC

Viewed by Ryan Baron (ryan.baron@bbklaw.com)
IP: 94.176.57.239



VIEWED

12 / 17 / 2021

18:30:29 UTC

Viewed by Joe Mosca (jmosca@encinitasca.gov)
IP: 76.176.116.202



SIGNED

12 / 17 / 2021

18:30:53 UTC

Signed by Ryan Baron (ryan.baron@bbklaw.com)
IP: 74.116.243.2



SIGNED

12 / 17 / 2021

18:31:27 UTC

Signed by Joe Mosca (jmosca@encinitasca.gov)
IP: 76.176.116.202

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AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Completed

Document History

**12 / 17 / 2021**
18:38:00 UTCViewed by Megan Wiegelman (mwiegelman@cityoframesa.us)
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18:38:12 UTCSigned by Megan Wiegelman (mwiegelman@cityoframesa.us)
IP: 12.239.17.209**12 / 17 / 2021**
18:38:12 UTC

The document has been completed.