

**REQUEST FOR PROPOSALS**  
**No. 22-001**  
**For**  
**DEBT COLLECTION SERVICES**



**Issue Date:** January 26, 2022

**Proposal Submission Deadline:** 4:00 p.m. PDT, February 18, 2022

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**San Diego Community Power**  
815 E Street,  
Suite 12716  
San Diego, CA 92112

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## 1. GENERAL INFORMATION

### A. Statement of Intent

This Request for Proposals (RFP) is issued by San Diego Community Power (“SDCP”). SDCP seeks a firm (or firms) to provide *Debt Collection Services* as part of SDCP’s overall strategy to secure long term financial viability, resiliency and competitiveness by minimizing bad debts.

#### **Background**

San Diego Community Power is the new electricity provider for the founding Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, and San Diego, and was expanded to add National City and unincorporated San Diego County. These will be referred to as the “member agencies.” SDCP’s Joint Powers Agreement (“JPA”) is the first in California to explicitly state that it will reach 100 percent renewable energy availability and usage by no later than 2035 and beyond, in advance of current State targets. The five member cities formed SDCP to achieve this and other goals collaboratively and with greater regional impact. SDCP began service in 2021 and will complete enrolling customers from the five cities by the middle of 2022 and National City and the unincorporated San Diego County by 2023. By 2023 SDCP expects to serve approximately 930,000 customer accounts and 7,200 GWh of annual load. For more information, please visit SDCP’s website at [www.sdcommunitypower.org](http://www.sdcommunitypower.org).

In December, 2021, SDCP formally adopted its [Collections & Delinquency Accounts Handling Policy](#) which establishes the criteria by which a debt collection agency may attempt to recover bad debts on behalf of SDCP. The current policy applies only to non-residential customers, which represent around ~70,000 accounts currently in service. Per SDCP’s Board direction in October of 2021, once additional data has been collected, SDCP staff may recommend to the Board that residential customers be covered by the Collections & Delinquency Policy. If the Board adopts the decision to have residential customers covered by our Collections & Delinquent Accounts handling policy the overall customer base will increase to approximately 930,000 customer accounts.

SDCP intends to procure the services in this RFP in a manner that maximizes the quality of services to SDCP while also maximizing the value to SDCP and, by extension, the customers of SDCP. Respondents must be able to show that they are capable of performing the services requested either within a single company or in a team approach. Such evidence includes, but is not limited to, the respondent’s demonstrated competency and experience in delivering services of a similar scope as well as the local availability of the Respondent’s personnel, press and other professional relationships, and other requisite resources that will be needed

throughout this engagement. **For the avoidance of doubt, this RFP does not commit SDCP to award a contract to any firm or to pay for any cost incurred in the submission of the proposal. SDCP may reject any and all proposals in their sole discretion. All Respondents shall be solely responsible for the costs of generating and submitting their proposals, whether successful or not.**

## 2. SCOPE OF WORK

### A. Delinquency and Debt Collection

The primary purpose of this RFP is to secure a contract with a qualified private collection agency to achieve maximum recovery of debts owed to SDCP. The objective to using outside collection agencies is to enhance the collections of SDCP revenues for which services were performed. SDCP values professionalism, a sense of community, and quality public services. As a result, SDCP is seeking professional firms that can perform collections effectively and empathetically, with care and respect to our diverse customer base.

### B. Description

The selected firm or firms will perform the following professional services for SDCP:

- Respondent shall familiarize itself with [SDCP's Collection & Delinquency Accounts Handling Policy](#) and the bad debt minimums listed within the policy
- Respondent shall accept referrals for non-residential customers from SDCP and/or SDCP's back-office service provider for collection and settlement
- When directed by SDCP, respondent may file credit reporting information on the pertinent customers with all applicable agencies
- Respondent shall demonstrate expertise and experience with debt collection and must be a member of the American Collectors Association and/or the Associated Credit Bureaus.
- Respondent shall make contact with all delinquent accounts referred by SDCP under the name of its debt collection agency, not in the name of SDCP.
- Respondent shall submit status reports on a monthly basis and an annual report on a fiscal year based on July 1st through June 30th fiscal year schedule, reflecting the activity for the previous fiscal year. These reports shall include data for each of account detailing the value of the current debt, money received, charges waived, balance due and date of last payment. A financial summary will also be required showing "period to date" and "year to date" totals for pertinent information such as receipts, net accounts

receivable, total accounts receivable, and collection percentage. In addition, an aging report should be available in summary and in detail. Successful respondent shall provide copies of all available reports.

- In accordance with SDCP's Board approved Collections and Delinquent Accounts Handling policy, no accrued interest will be charged on any customer account by the Respondent while collecting on customers' delinquent balances.
- Respondent shall accept automated (digital) or manual (hard copy) transfer of delinquent payment information from SDCP and/or SDCP's designated back-office service provider. It is expected that the successful proposer will work, at no additional cost, with SDCP and/or SDCP's designated back-office service provider to ensure accurate, timely and secured transmission of data.
- In accordance with SDCP's [Customer Data Confidentiality Policy](#), Respondent shall ensure that data flow between SDCP and/or SDCP's designated back-office service provider will be via secured channels such as SFTP, SharePoint etc. and guarantee the confidentiality, security, and safety of all files, documents, computer files, and shall agree to enter into a confidentiality agreement with the SDCP.
- Respondent shall perform all work in accordance with the applicable provisions of the Federal Fair Debt Collection Practices Act, as well as all state and local laws and SDCP staff direction.
- The respondent shall meet periodically with the SDCP staff to discuss all services. The respondent will also provide recommendations on how SDCP can reduce future bad debt. SDCP will provide overall feedback on the conduct of the collection service, as it will reflect on SDCP's policies and reputation. The respondent will agree to employ courteous business procedures to the end of maintaining SDCP's goodwill in the community. The respondent shall also provide updates to SDCP on changes in state and federal laws related to credit and collections.
- The respondent will be fully responsible for maintaining accurate records of all correspondence, documents, accounting records, transactions and other relative evidence for at least four (4) years in accordance with California's statute of limitations for debt collection. All records and books shall be made available to SDCP for review upon request.
- Any settlement of principal or charges shall be agreed upon between the respondent and SDCP, prior to acceptance. No legal actions shall be taken against a customer without the express written consent of SDCP

- The attorney of record on the collections referred that do require litigation, must be a member in active and good standing with the State Bar of California. The successful proposer must agree that any litigation commenced for collection of a premium debt be filed in the Superior Court of the State of California, located in San Diego, California.
- Ethical Vendor Standards. SDCP is committed to the highest standards of responsible behavior and integrity in all its business relationships. SDCP will consider a company's business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions.

The selected firm(s) must have the staff capable of meeting the requirements of this RFP. To the extent that a selected firm lacks specific expertise in any of the disciplines needed by SDCP, a professional team of subcontractors or associate firms should be assembled by the lead firm to complement their technical expertise.

### 3. PARTIAL GENERAL TERMS AND CONDITIONS

The below General Terms & Conditions are provided for illustration purposes and not limitation. Respondents may assume that the below terms will appear in the final negotiated agreement. As used in this section, "Contractor" shall mean the selected firm(s).

1. **Confidentiality.** All data and information obtained from or on behalf of SDCP by the Contractor and its agents in this RFP including reports, specifications and data shall be treated by the contractor and its agents as confidential. The Contractor and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity or in another job unless written consent is obtained from SDCP. Generally, each proposal and all documentation, including financial information, submitted by a Respondent to SDCP is confidential until a contract is awarded, when such documents become public record under State and local law, unless exempted under CPRA.
2. **California Public Records Act (CPRA).** All proposals become the property of SDCP which is a public agency subject to the disclosure requirements of the CPRA. Respondent's proposal will become a public record when contract negotiations are complete, and an agreement is executed by SDCP. If proprietary information is contained in documents submitted to SDCP and the Respondent claims that such information falls within one or more CPRA exceptions, Respondent must clearly mark such information 'Confidential and Proprietary' and identify the specific lines containing the information. In the event of a request for such information, SDCP will make its best efforts to provide

notice to Respondent prior to such disclosure. **DO NOT MARK YOUR ENTIRE PROPOSAL CONFIDENTIAL.** Only mark those elements that you believe contain proprietary information. A blanket statement of confidentiality will not be sufficient to consider whether portions of the proposal are exempt from public disclosure.

3. **Contract Pricing and Compensation.** The total value of this contract is undetermined. The schedule of compensation will be mutually negotiated. Responders should clearly identify proposed contract duration(s) and associated costs within their proposals. The prices quoted for services must be valid for the entire period indicated unless otherwise conditioned by the Respondent in its proposal.
4. **Contract Term & Extension.** The term of the initial contract shall be for twenty-four (24) months. The contract may be extended by mutual consent for an additional period to be negotiated six months prior to the end of the current contract term.
5. **Incurring Cost.** This RFP does not commit SDCP to award or pay any cost incurred in the submission of the proposal.
6. **Contractor Invoices.** The Contractor shall deliver a monthly invoice to SDCP with detailed expenses so as to ensure that expenditures are not-over extended relative to the agreed upon budget and compensation.
7. **Addenda.** SDCP reserve the right to revise the RFP documents. Any changes to the requirements will be made by written addenda to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any contract resulting from this RFP. Addenda will be posted on the SDCP website ([www.sdcommunitypower.org](http://www.sdcommunitypower.org)). It is the responsibility of the Respondents to check the SDCP website to determine if any addenda have been issued.
8. **Insurance.** Respondents should be aware of the insurance requirements for contract award. A certificate of insurance and all required endorsements, including naming SDCP as additionally insured, must be provided by the successful Respondent(s) prior to contract execution in accordance with the executed contract.
9. **Ownership of Materials.** All original plan documents and other materials prepared by or in possession of the Contractor as part of the work or services under these specifications shall become the permanent property of SDCP and shall be delivered to upon demand.



10. **Release of Reports and Information.** Any reports, information, data, or other material given to, prepared by or assembled by the Contractor as part of the work or services under these specifications shall be the property of SDCP and shall not be made available to any individual or organization by the Contractor without the prior written approval of SDCP.
11. **Copies of Reports and Information.** If SDCP requests additional copies of reports, specifications, or any other material in addition to what the Contractor is required to furnish in limited quantities as part of the work or services under these specifications, the Contractor shall provide such additional copies as are requested, and SDCP shall compensate the Contractor for the costs of duplicating of such copies at the Contractor's direct expense.
12. **Termination.** An agreement will be negotiated between the parties that includes provisions on termination for cause and termination for convenience of SDCP.
13. **Standard Agreement.** The successful Respondent, if any, will enter into an agreement for services based on SDCP's Standard Form Agreement, attached hereto as Attachment A. Respondent should review the agreement and may propose modifications as part of Respondent's proposal if Respondent seeks changes to the agreement. Proposed modifications will be considered and scored as part of Respondent's proposal.

## REQUEST FOR PROPOSALS PROCEDURE

### C. Tentative Schedule of Events

Tentative schedule is below:

| Event   | Date              |
|---|-------------------|
| Release Request for Proposals                 | January 26, 2022  |
| Questions Due to San Diego Community Power    | February 4, 2022  |
| SDCP Posts Response to Questions              | February 11, 2022 |
| Proposal Deadline                             | February 18, 2022 |
| Short Listing and Notification for Interviews | March 1, 2022     |
| Interviews                                    | March 7, 2022     |
| Final Negotiations/Contract Execution         | March 25, 2022    |

Respondents are encouraged to hold March 7, 2022 for interviews.

### D. Submission of Proposals

Questions about this RFP must be submitted online using the online [Questions Submission Form](#) and received by SDCP by 5:00 pm February 4, 2022. SDCP staff will post responses to questions no later than February 11, 2022.

**Respondent's proposal must be submitted electronically to SDCP as a single PDF document using the online [RFP Submissions Form](#) by 4:00 pm PST February 18, 2022.** SDCP will not accept multiple files, merged, collated, or assembled proposal materials.

All proposals must be twenty (20) pages or less and received by the stated date and time in order to be considered. SDCP will not be responsible for and may not accept late proposals due to slow internet connection, or for any other electronic failure (including but not limited to information transmission and internet connectivity failures).

Respondents may submit amended proposals before the Deadline to Submit Proposals. Such amended proposals must be complete replacements for previously submitted proposals and must be clearly identified in a written format.

By submitting a proposal, each Respondent certifies that its submission is not the result of collusion or any other activity which would tend to directly or indirectly influence the selection process. The proposal will be used to determine the Respondent's capability of rendering the services to be provided. The failure of a Respondent to comply fully with the instructions in this RFP may eliminate its proposal from further evaluation as determined in the sole discretion of SDCP. SDCP reserves the sole right to evaluate the contents of proposals submitted in response to this RFP and to select a firm, if any.

Proposals received late will not be given any consideration for the proposed services unless doing so is deemed to be in the best interests of SDCP, as determined in the sole discretion of SDCP.

Respondents may withdraw their proposals at any time prior to the Deadline to Submit Proposals. The Respondent must submit a written withdrawal request signed by the Respondent's duly authorized representative addressed to and submitted to SDCP.

There will be no public opening of proposals for this RFP.

## **E. Proposal Evaluation**

Evaluations will be based upon the information provided in the proposals and such other information requested by SDCP as deemed appropriate by SDCP. Proposals must provide clear, concise information and sufficient detail to enable reviewers/evaluators to evaluate the responsiveness and quality of the proposals to all RFP requirements. Proposals that fail to meet the RFP requirements may be

rejected; however, SDCP may waive minor irregularities in proposals if so doing would be in the best interests of SDCP. SDCP reserves the right to request additional information from any/all Respondents as part of the selection process.

Proposals will be evaluated based on the following non-exhaustive factors:

| <b>PROPOSAL EVALUATION CRITERIA</b>  | <b>WEIGHT</b>   |
|--|-----------------|
| Experience and Qualifications:   |                 |
| <ul style="list-style-type: none"> <li>• Experience in the areas identified in the “Scope of Work”</li> <li>• Meets requirements of the “Qualifications and Experience” section</li> <li>• Qualifications, professional network and experience of staff performing the work</li> <li>• Previous CCA/Energy experience</li> </ul> | 35%             |
| Respondent’s ideas, plans and approach to working with SDCP, its communities, key stakeholders and customers   | 30%             |
| Respondent’s demonstrated expertise with multi-lingual/multicultural outreach, emphatic engagement, and clear communications   | 20%             |
| Terms (Price) and Compliance with SDCP Contractual Terms   | 15%             |
| Bonus Points/Special Preferences (optional)  | 5%              |
| <b>TOTAL</b>   | <b>100-105%</b> |

### **Special Procurement Preferences/Scoring Bonuses:**

SDCP has identified the following additional contract preferences which shall receive 5% bonus out of a 100-point scoring system. If Respondents are interested in receiving a bonus for one or more of the following preferences, please provide pertinent information supporting your request:

- **San Diego County Preference (5%).** SDCP desires to support San Diego County businesses where possible. Businesses in this category are described as those with office(s) located in San Diego County and including at least 25% San Diego County residents under their employment.

SDCP also desires to support diversity among its contractors and vendors by working with women, minority, disabled veteran, and lesbian, gay, bi-sexual and transgender-owned businesses. Please voluntarily specify if your business or pertinent subcontracted businesses are owned by a person in one or more of these categories.

As reflected in the evaluation criteria, contract award will not be based solely on cost, but on a combination of factors as determined to be in the best interest of SDCP based on the criteria specified above. After evaluating the proposals and any oral interviews, SDCP reserve the right to further negotiate the proposed work and/or method and amount of compensation. SDCP may, at its sole discretion, invite a short list of Respondents to participate in interviews. If interviews are conducted, SDCP will evaluate the short-listed Respondents based on the information provided in the Proposal, the results of SDCP's research and investigation, and the interview and recommend the Respondent who ranked highest. Notwithstanding the foregoing, SDCP may reject all proposals.

## **4. PROPOSAL SUBMISSION REQUIREMENTS**

### **F. Page Limit**

All proposals must be twenty (20) pages or less.

### **G. Cover Letter**

The cover letter should be brief (two pages maximum) and provide a short synopsis of the Respondent's approach to completing tasks and delivering services sought. Describe how the delivery of services will be provided. If a team arrangement is proposed, SDCP will recognize the integrity and validity of Respondent's team provided that:

- The arrangements are clearly identified, and relationships are fully disclosed; and a primary (Lead) Respondent is designated who will be responsible for all contract performance.

- The signature of the individual authorized/obligated to commit the Respondent to this project is included.
- In signing proposal, statement that the Respondent agrees that the terms of proposal and the costs as submitted are firm for a period of 120 days from proposal due date, unless otherwise negotiated with SDCP

The cover letter should also include:

- The RFP number and title;
- Name and address of proposing firms and/or individuals;
- Phone and email address of sole or lead Respondent;
- Primary contact person.

## **H. Table of Contents**

This section should include a clear identification of the materials by section and page numbers.

### **I. Qualifications and Experience**

1. Provide a statement of qualifications for your organization, including the size of the firm, a brief description of all services provided by your firm, and a statement regarding the firm's experience and history of providing debt collection services.
2. How many full-time employees do you plan to assign to this project if you are selected?
3. How many people in total are employed by your company? Delineate between employees and consultants, (if applicable).

### **J. Proposed Approach**

Briefly describe your proposed approach for handling the requirements listed in the Scope of Services.

### **K. Customer Service**

1. In the event of a problem, who is to be contacted within your organization?
2. In the event of the identification of a problem by SDCP, their customers, and/or other applicable constituents, describe how you will address such problems and the timeframe for addressing them.
3. How does your organization plan on approaching customers with delinquent balances with empathy, consistent with SDCP values?

### **L. Cost Analysis for Primary Services**

Provide a detailed explanation for all costs associated with your firm providing the requested services.

## **M. Company Overview**

Please provide the following for your company:

- Official registered name (Corporate, D.B.A., Partnership, etc.), Dun & Bradstreet Number, Primary and secondary Standard Industry Classification (SIC) numbers, address, main telephone number, and toll-free number(s).
- Primary key contact name, title, address (if different from above), direct telephone number(s).
- Brief history, including year established, relevant financial information and relevant experience with CCAs.

## **N. References**

List at least three business references for which you have recently provided similar services. Include contact names, titles, phone numbers and e-mail addresses for all references provided.

## **O. Certificates of Insurance for the Following Coverages:**

SDCP requires the successful Respondent to obtain the following insurance policies and coverages, as set forth in the agreement, and SDCP shall be named additionally insured:

- Commercial General Liability – for bodily injury, property damage, and personal injury \$1,000,000 – each occurrence \$2,000,000 – in aggregate
- Business Automobile Liability – “any auto” (Company Vehicles) – At least \$1,000,000
- Personal Automobile Liability – “any auto” (Personal Vehicles) – At least \$500,000
- Worker’s Compensation and Employer’s Liability (EPL) – injury or death, each accident At least \$1,000,000 (EPL not required for Sole Proprietor)

## **P. Statement of No Conflict/Anti-Trust**

Please provide a statement that describes how Respondent(s) will adhere to anti-trust and collusion laws while providing service to SDGP. Also provide a statement that confirms that Respondent(s) and any subconsultants responding to this RFP shall avoid organizational conflicts of interest which would restrict full and open competition in this procurement and subsequent procurements.

An organizational conflict of interest means that due to other activities, business units, relationships or contracts that Respondent(s) would be unable, or potentially unable, to render impartial assistance or advice to SDGP consistent with the

requirements of California Government Code section 1090; or that a Respondent's objectivity in performing the work identified in the Scope of Work is or might otherwise be impaired; or Respondents have an unfair competitive advantage.

## **5. SDCP RIGHTS**

Any award of a contract resulting from this RFP will be based upon the most responsive Proposal whose offer will be the most advantageous to SDCP in terms of cost, functionality, effectiveness in meeting goals and objectives, and other factors as specified elsewhere in this RFP, as determined solely by SDCP decision makers. SDCP reserves the right to:

1. Disqualify any and all Proposals that are not submitted in accordance with the required format described in this RFP
2. Reject any and all Proposals submitted
3. Request additional information
4. Issue Addenda to this RFP
5. Award all, part, or none of the work contemplated in this RFP
6. Remedy errors in the RFP
7. Cancel the entire RFP
8. Issue a subsequent RFP
9. Approve or reject the use of a particular subcontractor/supplier
10. Negotiate with any, all or none of the Respondents. If SDCP is unable to negotiate a final contract Terms and Conditions that are acceptable to SDCP, SDCP reserves the right to award the contract to another Respondent
11. Accept other than the lowest priced Proposal
12. Award a contract without interviews, discussions or negotiations
13. Award a contract to one or more Respondents

## **6. SUPPLIER DIVERSITY**

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to procure at least 21.5% of their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' ("WMDVLGBTBEs") in all categories. Qualified businesses become GO

156 certified through the CPUC and are then added to the GO 156 Clearinghouse database.

The CPUC Clearinghouse can be found here: [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com). While SDCP is not legally required to comply with GO 156, SDCP's policies and commitment to diversity are consistent with the principles of GO 156, and, therefore, respondents to this RFP are asked to voluntarily disclose their GO 156 certification status as well as their efforts to work with diverse business enterprises, including those owned or operated by women ("WBE"), minorities ("MBE"), disabled veterans ("DVBE"), and lesbian, gay, bisexual, or transgender people ("LGBTBE").

SDCP, as a public agency and consistent with state law, will not use any such provided information in any part of its decision-making or selection process. Rather, SDCP will use that information solely to help evaluate how well it is conforming to its own policies and goals. Pursuant to California Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin.

## **7. NON-DISCRIMINATION**

SDCP will not discriminate and will require their contractors to not discriminate on the basis of race, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. The successful firm shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

Thank you for your interest we look forward to reviewing your proposal.



## ATTACHMENT A: Standard Form Contract

### SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between SAN DIEGO COMMUNITY POWER, a California joint powers agency (“**SDCP**”) and [INSERT NAME OF CONSULTANT], a [INSERT TYPE OF ENTITY] (“**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 [INSERT TYPE OF SERVICES], is licensed in the State of California [IF APPLICABLE], and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for the [INSERT BRIEF PROJECT DESCRIPTION] (“**Project**”) as set forth in this Agreement.

#### AGREEMENT

##### 1. **Scope of Services and Term.**

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

1.2 Term. The term of this Agreement shall be from [INSERT START DATE] to [INSERT ENDING DATE; RECOMMEND AT LEAST ONE YEAR], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

##### 2. **Responsibilities of Consultant.**

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

## ATTACHMENT A: Standard Form Contract

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

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

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

[INSERT NAME(S) OF KEY PERSONNEL]

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

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

2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services

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

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

### 2.10 Insurance.

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

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

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as

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

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

2.10.3 Professional Liability. **[INCLUDE ONLY IF APPLICABLE - DELETE OTHERWISE]** Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. **[INCREASE IF NECESSARY - OTHERWISE LEAVE AS IS AND DELETE THIS NOTE]** This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

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

(A) General Liability.

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

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

(iii) The policy shall give SDCP, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01,

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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

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coverage at least as broad as provided on the underlying policy(ies).

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

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

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

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

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

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

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

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

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

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

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

### 3. Fees and Payments.

3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit C, attached hereto. The total compensation shall not exceed **[INSERT WRITTEN DOLLAR AMOUNT]** (\$---) without written approval of SDCP's **[INSERT TITLE]**. 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 statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. SDCP shall, within 45 days of receiving such statement, review the statement and pay all approved charges thereon.

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

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. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from SDCP’s Representative.

4. **Accounting Records.** Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of SDCP during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of 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 seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to SDCP, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

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

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

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

**Consultant:** [INSERT NAME, ADDRESS & CONTACT PERSON]

**SDCP:** San Diego Community Power  
Attn: Executive Director



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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 shall require all subcontractors to agree in writing that SDCP is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by SDCP. SDCP shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at SDCP’s sole risk.

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

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

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

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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

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

5.6.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code § 2782.8), then, and only to the extent required by Civil Code § 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

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

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

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

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

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

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

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

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

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

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

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

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

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

5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware

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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]**

**ATTACHMENT A: Standard Form Contract**

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

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

**SAN DIEGO COMMUNITY POWER**

**[INSERT NAME OF CONSULTANT]\***

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By : \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
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**

**SCOPE OF SERVICES**

**[INSERT]**

**EXHIBIT B**

**SCHEDULE OF SERVICES**

**[INSERT]**



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**EXHIBIT C**

**COMPENSATION BILLING RATES**

| <b><u>Name</u></b> | <b><u>Title</u></b> | <b><u>Hourly Rate</u></b> |
|--------------------|---------------------|---------------------------|
|--------------------|---------------------|---------------------------|