

REQUEST FOR PROPOSALS
FOR
SAN DIEGO COMMUNITY POWER
FOR

PROGRAM ADMINISTRATION SERVICES FOR COMMUNITY GRANT PROGRAM

SAN DIEGO COMMUNITY POWER
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**SAN DIEGO COMMUNITY POWER
REQUEST FOR PROPOSALS**

No. 23-008

For Program Administration Services for Community Grant Program

Issue Date: August 14, 2023

Proposal Submission Deadline: September 8, 2023

I. BACKGROUND AND INTRODUCTION

San Diego Community Power (“SDCP”) is the default electricity provider for the Cities of Chula Vista, Encinitas, Imperial Beach, La Mesa, National City, and San Diego and the County of San Diego which serves the unincorporated area (collectively, “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. Five original member cities formed SDCP to achieve this and other goals collaboratively and with greater regional impact. SDCP began service in 2021 and completed enrolling customers from the five original cities in the middle of 2022 and unincorporated San Diego County and National City in 2023. This enrollment covers approximately 960,000 customer accounts. For more information, please visit SDCP’s website at www.sdcommunitypower.org. Firms shall review SDCP’s [Procurement Policy](#) and [Inclusive and Sustainable Workforce Policy](#) to ensure compliance when drafting proposals.

Through this Request for Proposals (“RFP”), SDCP is seeking proposals from qualified firms¹ to provide professional services (“Services”). These Services are sought in order to administer and implement SDCP’s Community Grant Program. SDCP expects the work to commence on or about October 2023 through June 2027.

II. PROPOSAL SCHEDULE

The estimated timetable for this RFP is as follows:

Description	Date
Release of RFP	August 14, 2023
Deadline for Written Questions	August 23, 2023 at 5:00 p.m. PT
Responses to Questions Provided	August 28, 2023 at 5:00 p.m. PT
Proposals Due	September 8, 2023 at 5:00 p.m. PT
Virtual Interviews (if required by SDCP)	September 13, 2023 – September 15, 2023
Execution of Contract	Expected on or around September 29, 2023
Commencement of Work	Expected on or around October 2, 2023

¹ Use of the term “firm” throughout this document shall mean individual proprietorship, partnership, limited liability company, corporation, or joint venture.

The above scheduled dates are tentative and SDCP retains the sole discretion to adjust the above schedule. Nothing set forth herein shall be deemed to bind SDCP to award a contract for the above-described Services, and SDCP retains the sole discretion to cancel or modify any part of or all of this RFP at any time.

III. QUESTIONS AND RESPONSES

Prospective Proposers may submit questions regarding this RFP using the online Questions Submissions Form. All questions must be received by 5:00 p.m. PT on August 23, 2023. When submitting questions, please specify which section of the RFP you are referencing and quote the language that prompted the question. Questions may address issues or concerns that the evaluation criteria and/or business requirements would unfairly disadvantage Proposer or, due to unclear instructions, may result in SDCP not receiving the best possible responses from Proposer.

SDCP will provide responses to questions by 5:00 P.M. PT on August 28, 2023. SDCP reserves the right to group similar questions when providing answers.

IV. PROPOSAL SUBMISSION DEADLINE

The Proposer's proposal should be submitted electronically to SDCP as a single PDF document using the online RFP Submissions Form by 5:00 p.m. PT on September 8, 2023.

It is the sole responsibility of the submitting Proposer to ensure that its proposal is received before the submission deadline. Submitting Proposers shall bear all risks associated with delays in delivery. Any proposals received after the scheduled closing date and time for receipt of proposals may not be accepted.

V. REQUEST FOR PROPOSALS

A. Scope of Services

The Services sought under this RFP are set forth in more detail in **Attachment A**, attached hereto and incorporated herein by reference. Notwithstanding the inclusion of such Services in **Attachment A**, the final scope of Services negotiated between SDCP and the successful Proposer shall be set forth in the Professional Service Agreement ("Agreement") executed by and between SDCP and the successful Proposer. A copy of the Agreement is attached hereto as **Attachment B**.

B. Content and Format of Proposal

Proposals shall be concise, well organized, and demonstrate qualifications and applicable experience. Proposals shall be in the following order and shall include the following components:

1. Identification of Proposer: (limit: 1 page)

- a. Legal name and address of the company.
- b. Legal form of company (partnership, corporation).
- c. If company is a wholly owned subsidiary of a “parent company,” identify the “parent company.”
- d. Name, title, address, and telephone number of the proposed representative to contact concerning the Proposal Submittal.
- e. California Business License Number

2. Staffing Resources: (limit: 1 page)

- a. Describe proposed team organization, including identification and responsibilities of key personnel. Identify at least two (2) persons that will be principally responsible for working with SDCP and indicate the role and responsibility of each.

3. Experience: (limit: 2 pages)

- a. Provide a description of how the Proposer’s experience and professional skills will fulfill the general functions identified in this RFP. The Proposer shall state the number of years the firm has conducted business. Proposer must have at least one (1) years’ experience in providing the required scope of Services identified in **Attachment A**.
- b. Provide two (2) references regarding the Proposer’s experience and performance performing similar services. Include the following information: (1) organization name, contact name, phone number, e-mail address; and (2) project description (e.g., total budget, timeline) and description of services performed by Proposer.
- c. Provide a description of the firm’s experience working on projects in San Diego County.

4. Eligibility for Bonus(es) under SDCP Procurement Policy: (limit: 1 page - not including supporting documentation) Information on the Proposer’s eligibility for the bonuses is described below (a Proposer may pursue up to two of the four bonuses):

- a. SDCP desires to support San Diego County businesses where possible. Businesses with office(s) located in San Diego County and include at least 25% San Diego County residents under their employment shall receive a bonus of up to 5 points or 5% out of a

100-point scoring system in competitive solicitations. To receive the bonus, a Proposer must submit written information relating to the location of its office(s) in San Diego County and the percentage of San Diego County residents under its employment (as a share of its total employees). Such information shall be subject to verification by SDCP.

b. Businesses certified as disabled veteran business enterprises by the Supplier Clearinghouse (www.thesupplierclearinghouse.com) shall receive a bonus of up to 5 points or 5% out of a 100-point scoring system in competitive solicitations. To receive the bonus, a Proposer must submit proof of current, valid certification by the Supplier Clearinghouse. Such proof shall be subject to verification by SDCP.

c. Businesses certified as a Persons with Disabilities business enterprise by the Supplier Clearinghouse or Disability:IN shall receive a bonus of up to 5% or 5 points out of a 100-point scoring system in competitive solicitations. To receive the bonus, a Proposer must submit proof of current, valid certification by the Supplier Clearinghouse or Disability:IN. Such proof shall be subject to verification by SDCP.

d. Businesses certified as small business by the Department of General Services shall receive a bonus of up to 5% or 5 points out of a 100-point scoring system in competitive solicitations. To receive the bonus, a Proposer must submit proof of current, valid certification by the Department of General Services. Such proof shall be subject to verification by SDCP.

5. Proposed Method to Accomplish the Work: (limit: 1 page) Describe the technical and management approach to providing the Services to SDCP. Proposer should take into account the scope of the Services, goals of SDCP, and general functions required. Include a draft schedule of tasks, milestones, and deliverables that will provide for timely provision of the Services. In reviewing the scope of Services described in **Attachment A**, the Proposer may identify additional necessary tasks and is invited to bring these to SDCP's attention within the discussion of its proposed method to accomplish the work.

6. Fee Proposal: (limit: 1 page) Provide a description of any fees and/or compensation the Proposer may seek from SDCP for services. Fees for these Services may be proposed in terms of the percentage of the total grant funds to be disbursed for each program year (or "administration rate"). Proposers should provide justification for how the administration rate was calculated such as by outlining staff time and hourly billing rates for the staff expected to provide Services, equipment, materials, travel, administrative/clerical, overhead, and other out-of-pocket expenses. Fees for these Services may also be proposed as a time and materials basis; please provide a detailed fee summary with a not-to-exceed amount for each year or portion thereof during the contract term.

7. Litigation: (limit: 1 page) Provide litigation history for any claims filed by your firm or against your firm related to the provision of any services in the last five (5) years.

8. Conflicts of Interest: Proposer must identify any potential conflicts of interest with other current or former clients, including, but not limited to, Sempra Energy, San Diego Gas & Electric (SDG&E), and affiliates thereof, and how they expect to resolve those conflicts.

9. Exceptions to RFP/Professional Services Agreement: Proposer must identify whether it takes any exceptions to this RFP including, but not limited to, the Agreement in **Attachment B** (see Section V.E.1 below). If so, such exceptions must be clearly noted in the proposal.

C. Protests

1. Protest Contents: Proposer may protest a contract award if the Proposer believes that the award was inconsistent with SDCP policy or this RFP is not in compliance with law. A protest must be filed in writing with SDCP (email is not acceptable) within five (5) business days after receipt of notification of the contract award. Any protest submitted after 5:00 p.m. PT on the fifth business day after notification of the contract award will be rejected by SDCP as invalid and the Proposer's failure to timely file a protest will waive the Proposer's right to protest the contract award. The Proposer's protest must include supporting documentation, legal authorities in support of the grounds for the protest and the name, address, and telephone number of the person representing the Proposer for purposes of the protest. Any matters not set forth in the protest shall be deemed waived.

2. SDCP Review: SDCP will review and evaluate the basis of the protest provided the protest is filed in strict conformity with the foregoing. SDCP shall provide the Proposer submitting the protest with a written statement concurring with or denying the protest. Action by SDCP relative to the protest will be final and not subject to appeal or reconsideration. The procedure and time limits set forth in this Section are mandatory and are the Proposer's sole and exclusive remedy in the event of protest. Failure to comply with these procedures will constitute a waiver of any right to further pursue the protest, including filing a Government Code claim or legal proceedings.

D. Submittal Requirements

1. General: It is strongly recommended that the Proposer submit proposals in the format identified in Section V.B to allow SDCP to fully evaluate and compare the proposals. All requirements and questions in the RFP should be addressed and all requested information should be supplied. SDCP reserves the right to request additional information which, in SDCP's opinion, is necessary to assure that the Proposer's competence, qualifications, number of qualified employees, business organization and financial resources are adequate to perform the Services according to the terms of the Agreement.

2. Preparation: Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Proposer's demonstrated capability to perform work of this

type. Expensive bindings and promotional materials, etc., are not necessary or desired. However, technical literature that supports the approach to providing the Services and work plan should be forwarded as part of the proposal. Emphasis should be concentrated on completeness, approach to the work, and clarity of the proposal.

3. Authorization: The proposal shall be signed by an individual, partner, officer, or officers authorized to execute legal documents on behalf of the Proposer.

E. Miscellaneous

1. Exceptions Certification to this RFP: In submitting a proposal in response to this RFP, Proposer is certifying that it takes no exceptions to this RFP including, but not limited to, the Agreement in **Attachment B**. If any exceptions are taken, such exceptions must be clearly noted in the proposal and may be reason for rejection of the proposal. As such, Proposer is directed to carefully review the attached Agreement and, in particular, the insurance and indemnification provisions therein.

2. Amendments to Proposals: No amendment, addendum, or modification will be accepted after a proposal has been submitted to SDCP. If a change to a proposal that has been submitted is desired, the submitted proposal must be withdrawn and the replacement proposal submitted to SDCP prior to the proposal due date and time.

3. Price Validity: Prices provided by Proposers in response to this RFP are valid for 90 days from the proposal due date. SDCP intends to award the contract within this time but may request an extension from the Proposers to hold pricing, until negotiations are complete and the contract is awarded.

4. Right to Negotiate and/or Reject Proposals: SDCP reserves the right to negotiate any price or provision, task order or service, accept any part or all of any proposals, waive any irregularities, and to reject any and all, or parts of any and all proposals, whenever, in the sole opinion of SDCP, such action shall serve its best interests and those of SDCP ratepayers. The Proposers are encouraged to submit their best prices in their proposals, and SDCP intends to negotiate only with the Proposer(s) whose proposal most closely meets SDCP's requirements at the lowest estimated cost. The contract award, if any is awarded, will go to the Proposer whose proposal best meets SDCP's requirements.

5. Prevailing Wages: Proposers shall take cognizance of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. To the extent applicable, the Proposer must agree to fully comply with and to require its subcontractors/subconsultants to fully comply with such Prevailing Wage Laws.

F. Proposal Evaluations & Criteria

Proposals will be evaluated in accordance with the following evaluation criteria:

	Evaluation Criteria	Points Possible
1.	Proposer's approach to the scope of Services requested in Attachment A	40
2.	Demonstration of past success with development of grant funding sources (see Task 1 in Attachment A)	10
3.	Demonstration of past success with administering a grant program (see Tasks 2, 3, and 4 in Attachment A)	30
4.	Commercial Terms (Price) and Compliance with SDCP Contractual Terms	20
5.	Bonus Points/Special Preferences (optional)	Up to 10
	Total	100-110

For a list of bonus points/special preferences, please see Section V.B.4 above or visit SDCP's procurement policy [here](#). Following the initial evaluation, SDCP may select one particular Proposer or select a number of Proposers (with or without interviews); or conduct interviews with a "short list" of Proposers, consisting of those Proposers reasonably likely, in the opinion of SDCP, to be awarded the contract. Any interview may include discussions about services offered, conflicts of interests with other clients, or fees/compensation amount or structure. Interviews may take place through written correspondence, telephone, or video conference, and/or face-to-face interviews, at SDCP's sole discretion.

SDCP reserves the right to not convene interviews or discussions, and to make an award on the basis of initial proposals received. References may be contacted at any point in the evaluation process.

After a Proposer(s) has been selected, SDCP will negotiate a contract for execution. If a satisfactory contract cannot be negotiated, SDCP may, at its sole discretion, begin contract negotiations with the next qualified Proposer who submitted a proposal, as determined by SDCP. Proposers are further notified that SDCP may disqualify any Proposer with whom SDCP cannot satisfactorily negotiate a contract.

VI. RESERVATION OF RIGHTS

This RFP is a solicitation for proposals only and is not intended as an offer to enter into a contract or as a promise to engage in any formal competitive bidding or negotiations. SDCP may, at its sole discretion, accept or reject any or all proposals submitted in response to this RFP. In addition, SDCP may, at its sole discretion, only elect to proceed with contract negotiations for some of the services included in the proposal. SDCP further reserves the right to cancel this RFP at any time prior to contract award without obligation in any manner for proposal preparation, interview, fee negotiation or other marketing costs associated with this RFP. SDCP also reserves

the right to waive minor errors and omissions or inconsequential disparities in proposals, request additional information or revisions to offers, and to negotiate with any or all Proposers.

SDCP shall not be liable for any costs incurred by the Proposer in connection with the preparation and submission of any proposal. SDCP has the right to amend the RFP, in whole or in part, by written addendum, at any time. SDCP is responsible only for that which is expressly stated in the solicitation document and any authorized written addenda. Such addendum shall be made available to each person or organization which SDCP records indicate has received this RFP. Should such addendum require additional information not previously requested, failure to address the requirements of such addendum may result in the proposal being found non-responsive and not being considered, as determined in the sole discretion of SDCP. SDCP is not responsible for and shall not be bound by any representations otherwise made by any individual acting or purporting to act on its behalf prior to an award of contract by SDCP. SDCP has the right to reissue the RFP at a future date.

VII. CONFIDENTIALITY AND PUBLIC RECORDS

Proposals submitted in response to this RFP shall become the exclusive property of SDCP. SDCP is subject to the California Public Records Act (“CPRA”). The proposal will become a matter of public record when contract negotiations are complete and when an agreement is executed by SDCP. Exceptions to disclosure may be available to those parts or portions of proposals that are justifiably and reasonably exempted under the CPRA, such as trade secrets. If a Proposer desires to exclude a portion of its proposal from disclosure under the California Public Records Act, the Proposer must prominently mark it “confidential” and state the specific provision in the California Public Records Act that provides the exemption as well as the factual basis for claiming the exemption. A blanket statement of confidentiality or the marking of each page of the proposal as confidential shall not be deemed sufficient notice of a CPRA exemption. A Proposer who indiscriminately and without justification identifies most or all of its proposal as exempt from disclosure or submits a redacted copy may be deemed non-responsive.

Although the CPRA recognizes that certain confidential information or other exempt records may be protected from disclosure, SDCP is not in a position to establish that the information that a Proposer submits is exempt. If a request is made for information marked “Confidential,” SDCP will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

SDCP shall not, in any way, be liable or responsible for any resulting disclosure of any such record or any parts thereof pursuant to the CPRA or otherwise by law.

VIII. CONFLICTS OF INTEREST

SDCP is governed by the Political Reform Act, Government Code Section 1090, Government Code Section 84308, and other requirements governing conflicts of interest, campaign contributions, and gifts. Proposers are required to review all applicable conflict of

interest laws. In addition, SDCP has adopted policies governing procurement. Proposers are advised to review all policies, including the Procurement Policy, available at: <https://sdcommunitypower.org/resources/key-documents/>.

The Proposer may not contact or receive information outside of this RFP process. If it is discovered that the Proposer contacted and received information from anyone other than the mediums used to share information about this solicitation process, SDCP may, in its sole discretion, disqualify the proposal from further consideration.

IX. REPORTING OF SUPPLIER DIVERSITY INFORMATION

Public Utilities Code Section 366.2(m) requires certain community choice aggregators, including SDCP, to annually submit to the California Public Utility Commission (“CPUC”): (1) a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises; and (2) a report regarding its procurement from women, minority, disabled veteran, persons with disabilities, and LGBT business enterprises.

General Order (GO) 156, adopted by the CPUC, requires certain California public utilities to engage in outreach activities and meet specific procurement goals from women, minority, disabled veteran, persons with disabilities, and LGBT business enterprises. Qualified businesses become GO 156 certified through the CPUC and are then added to the GO 156 Supplier Clearinghouse database (www.thesupplierclearinghouse.com). Although SDCP is not subject to GO 156, SDCP supports the goals and principles of GO 156 and desires to obtain information relating to supplier diversity in order to assist SDCP in evaluating its outreach and other activities consistent with applicable law.

To assist SDCP with its reporting obligations under Public Utilities Code Section 366.2(m) and with evaluating its supplier outreach and other activities, proposers that are awarded the contract will be asked to voluntarily disclose their certification status with the CPUC Clearinghouse, as well as their efforts to work with diverse business enterprises, including WBEs, MBEs, DVBEs, and LGBTBEs.

Except as otherwise expressly provided under this Policy and/or required by applicable state or federal law or funding requirements (including, without limitation, any grant or loan conditions), SDCP shall not use any demographic information received from potential vendors in any way as part of its decision-making or selection process. Rather, SDCP will use such information solely for compliance with its reporting obligations to the CPUC and evaluation of SDCP’s outreach and other activities consistent with applicable law. Pursuant to Article I, Section 31 of the California Constitution, SDCP shall not discriminate against or give preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin except as otherwise allowed therein.

X. NON-DISCRIMINATION

SDCP will not discriminate and will require its 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 contractors, subcontractors, vendors, or suppliers. The successful firm shall provide equal opportunity for subcontractors to participate in subcontracting opportunities.

XI. ATTACHMENTS

Attachment A – Scope of Services

Attachment B – SDCP Sample Professional Services Agreement

ATTACHMENT A SCOPE OF SERVICES

Background

SDCP's Community Grant Program aim to support scalable, replicable clean energy projects that provide economic, environmental, and health benefits to SDCP's communities. In December 2022, SDCP's Board of Directors approved the Community Grant Program [Policy](#), and in March 2023, SDCP officially launched the program.

SDCP plans on administering the grant program annually. The inaugural Fiscal Year (FY) 2022-23 program had a total approved budget of \$300,000. The grant application opened in March 2023 and awards were made in June 2023, with grant reporting concluding in June 2024. A budget of \$500,000 has been approved for the FY 2023-24 program. Program budgets beyond FY 2023-24 are unknown, but it is anticipated that they will continue to increase. SDCP expects to issue task orders each program year after the program budget is approved (anticipated in June of each year).

The administration of the inaugural FY 2022-23 program was completed for a fee equal to 15% of the total grant program budget (i.e., 15% of \$300,000 or \$45,000). The inaugural year included several process developments that will be utilized for future program years.

Services

SDCP is seeking a qualified firm to perform the following work to support administration for the next three program years (i.e., FY 2023-24, FY 2024-25, FY 2025-26) of the Community Grant Program:

- 1. Development of Grant Funding Sources** – Firm will help identify potential additional funding sources to increase the program budget (i.e., match funding). When feasible and appropriate, firm will seek out funding sources. Given the program timing and needed flexibility for the grants, the anticipated primary source of additional funding is philanthropic funding rather than public funding.
- 2. Facilitation of Grant Application and Evaluation Process** – Firm will facilitate the grant application and evaluation process from start to finish. This includes development of all grant materials and the application intake process, sending grant communications, providing technical assistance to potential applicants to complete the application as needed, and facilitating grant evaluations with a to-be-established grant evaluation committee.
- 3. Distribution of Grant Agreements and Funds** – Firm will process grant selections, notify grantees, execute grant agreements, and distribute funds.
- 4. Facilitation of Grant Reporting** – Firm will develop and facilitate grant reporting with each grantee.

All program guidelines (e.g., grant application process, evaluation process, and reporting requirements) will be led by the Proposer in consultation with SDCP.

ATTACHMENT B
SDCP SAMPLE 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.

1.3 **Task Orders.** At such time that SDCP determines to have Consultant perform Services under this Agreement, SDCP shall issue a Task Order. Any and all work performed under any Task Order issued pursuant hereto shall be governed by the terms and conditions set forth in this Agreement. It is contemplated that individual Task Orders shall, in general, contain the following information: (i) a description of the scope of work included in such Task Order; (ii) a lump sum price and/or such other terms of compensation (including a not-to-exceed amount) for the specific work included in the Task Order’s scope of work; (iii) a date and time by which the requested work shall be completed for the Task Order's scope of work and/or such other schedule requirements for Task Order; (iv) any other specific requirements of the scope of work. If Consultant agrees to perform the requested work, begins to perform the requested work, or does

not respond within five calendar days, then Consultant will have agreed to perform the requested work on the terms set forth in the Task Order, this Agreement and its Exhibits.

2. Responsibilities of Consultant.

2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. SDCP retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of SDCP and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the 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 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 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, or endorsements providing the exact same coverage.

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

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

(C) Workers’ Compensation and Employers Liability Coverage.

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

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

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

(i) The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of SDCP (if agreed to in a written contract or agreement) before SDCP's own insurance or self-insurance shall be called upon to protect it as a named insured. The umbrella/excess policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying policy(ies).

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

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

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

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

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

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

2.10.5 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.

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, the Task Order authorizing the Services, 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.

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
815 E Street, Suite 12716
San Diego, CA 92112

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.

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

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

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

photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

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

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

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

5.6 Indemnification.

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

5.6.2 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.

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 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]

SAMPLE

**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]

SAMPLE

EXHIBIT B

SCHEDULE OF SERVICES

[INSERT]

SAMPLE

