

EXCLUSIVITY AGREEMENT

THIS EXCLUSIVITY AGREEMENT (the “**Agreement**”) is entered into this ___ day of _____, 2025, by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”), and [INSERT ENTITY NAME], a [state and type of legal formation] (“**Respondent**”), with respect to the [INSERT PROJECT NAME] project (the “**Project**”). SDCP and Respondent may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, Respondent submitted an offer to SDCP for the sale of [energy, capacity, environmental attributes] from the Project at a price of \$[] for a delivery term of [] years (the “**Offer**”);

WHEREAS, pursuant to the Offer, SDCP and Respondent desire to enter into exclusive, good faith negotiations for a defined negotiation period in order to negotiate, agree upon and execute a long-term renewable power purchase agreement (“**PPA**”).

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

I. Negotiations.

A. Good Faith Negotiations. SDCP and Respondent, acknowledging that time is of the essence, agree for the Negotiation Period (as defined below) to negotiate diligently and in good faith the terms and conditions of the PPA pursuant to which SDCP will purchase and Respondent will sell certain renewable energy. SDCP and Respondent may mutually agree during the term of the negotiations to adjust the scope of the Project, as the Parties deem necessary.

B. Exclusive Negotiations. With regard to the Offer, Respondent agrees to negotiate exclusively with SDCP and with no other party. Respondent represents and warrants that, during the Negotiation Period (as defined below): (i) it will not enter into any agreements nor otherwise directly, or indirectly, through any representatives or otherwise, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any third party under which it or its affiliates may agree, conditionally or unconditionally to enter into a PPA for the output of the Project associated with the Offer; and (ii) it will promptly notify SDCP of any material change in circumstances that may affect Respondent’s ability to fulfill the terms of its offer, at any time from submission of the Offer to SDCP’s acceptance of the Offer, as evidenced by SDCP’s execution of a PPA, or Respondent’s withdrawal of the Offer. Respondent understands and agrees that any breach by Respondent of the above representations and warranties constitutes a material breach under this Agreement.

II. Term of Agreement.

The term of this Agreement shall be ninety (90) calendar days from the date of execution of this Agreement by SDCP (the “**Negotiation Period**”), unless earlier terminated by SDCP. SDCP may, in its sole discretion by and through its Executive Director or designee, agree to extend the Negotiation Period for thirty (30) additional calendar days to allow additional time for the negotiation and execution of the PPA (the “**Extension Period**”). If, upon expiration of the Negotiation Period, SDCP has not extended the Negotiation Period, or upon expiration of the Extension Period, this Agreement shall automatically terminate.

III. Deposit.

Respondent acknowledges and agrees that SDCP will expend, and has expended, considerable resources in the review of Respondent’s Offer and negotiation of the PPA during the Negotiation Period and any applicable Extension Period. In order to ensure Respondent’s commitment to the good faith negotiations contemplated herein, Respondent shall submit to SDCP, within seven (7) business days of execution of this Agreement by SDCP, a deposit in the amount of \$[_____]00 (\$3,000/MW of Project proposed guaranteed capacity) (*Exclusivity and Bid Deposit*) (“**Deposit**”). The Deposit is calculated based upon the offered quantity of [___] MW of renewable generating capacity. The Deposit shall be in the form of cash or Letter of Credit to ensure that Respondent will proceed diligently and in good faith to negotiate and perform all of Respondent’s obligations under this Agreement. SDCP shall provide wire instructions to Respondent if Respondent requests to post the Deposit in the form of cash. Alternatively, Respondent may elect to provide a Letter of Credit. “Letter of Credit” means an irrevocable standby letter of credit, in a form reasonably acceptable to SDCP, issued either by (i) a U.S. commercial bank, or (ii) a U.S. branch of a foreign commercial bank that meets the following conditions: (A) it has sufficient assets in the U.S. as determined by SDCP, and (B) it is acceptable to SDCP in its sole discretion. The issuing bank must have a credit rating of at least A- from S&P or A3 from Moody’s, with a stable outlook designation. All costs of the Letter of Credit shall be borne by Respondent. The Letter of Credit should be sent by overnight delivery to:

Attn: Jannies Burlingame, Appointed Treasurer
San Diego Community Power
815 E Street, Unit 12716
San Diego, CA 92112

IV. SDCP Termination; Deposit Forfeiture; Return of Deposit.

A. SDCP Termination; Deposit Forfeiture. In the event that SDCP determines in its reasonable discretion that Respondent is not negotiating diligently and in good faith, SDCP shall give written notice thereof to Respondent who shall then have three (3) business days to commence negotiating in good faith. Following the receipt of such notice, and the failure of Respondent to thereafter commence negotiating in good faith within three (3) business days, this Agreement may be terminated for cause by SDCP. In the event of termination for cause by SDCP, Respondent shall forfeit, and SDCP shall retain, the Deposit, and neither Party shall have any further rights against or liability to the other under this Agreement. Further, Respondent hereby acknowledges and agrees that Respondent will forfeit its Deposit and SDCP shall have the right to draw on the Deposit in its entirety,



as its sole and exclusive remedy, if (i) it is determined that Respondent made any material misrepresentations in the Offer, (ii) Respondent materially breaches its obligations under this Agreement, (iii) Respondent unilaterally withdraws the Offer or attempts to materially modify the terms of its Offer prior to the expiration of the Negotiation Period or Extension Period, as applicable, or (iv) prior to the expiration of the Negotiation Period or Extension Period, as applicable, Respondent enters into discussions with any third party under which such third party, or any of such third party's affiliates may agree, conditionally or unconditionally, to enter into a PPA for the sale of the capacity associated with the Offer.

B. Return of Deposit. The Deposit shall promptly be returned to Respondent in its entirety under one or more of the following conditions: (i) upon the automatic termination of this Agreement at the expiration of either the Negotiation Period or the Extension Period, as applicable; (ii) following execution of the PPA and provision of the required security in accordance with the terms of such PPA, (iii) failure of both SDCP and Respondent to agree on the terms of the PPA, or (iv) SDCP's termination of this Agreement. Upon return of the Deposit, neither Party shall have any further rights against or liability to the other under this Agreement.

V. Agreement Limitations.

This Agreement does not obligate SDCP to enter into a PPA or any other agreement with respect to Respondent's Offer. Respondent agrees that SDCP will not be obligated to enter into any transaction with Respondent unless and until a final negotiated PPA has been submitted for, and received, approval from the Board of Directors of SDCP, and is fully executed by the Parties thereto.

VI. Confidentiality.

Except to the extent that its counsel deems it necessary and required to comply with applicable laws, rules, or regulations, without prior written consent of the other Party, neither SDCP nor Respondent nor their respective consultants and/or advisors will make any public comment, statement, or communication with respect to, or otherwise disclose or permit the disclosure of the substance of the discussions and negotiations described herein, including the existence of this Agreement. SDCP and Respondent acknowledge that these negotiations will require the exchange of confidential, sensitive business information and information regarding legal issues. It is acknowledged that the disclosure of this information to outside parties could jeopardize the effectiveness and ultimate successful conclusion of these negotiations or the implementation of any resulting agreement. Accordingly, SDCP and Respondent confirm their common interests with respect to the exchange of confidential, proprietary and privileged information. It is acknowledged that the exchange of such information shall not be considered a waiver of any claim of privilege, including the attorney-client, official information, and deliberative process privileges, as well as the work product doctrine, or to any other claim of confidential and proprietary protection. It is further acknowledged that neither Party has the right to waive the other Party's privileges or claims of confidentiality or to disclose the other Party's information to third parties without the consent of that other Party. It is the intent of the Parties that the full protections of the common interest doctrine and the joint defense privilege as set forth under California and federal case, regulatory and statutory law shall apply. This Agreement shall not be construed to preclude a Party from complying with any statutory, regulatory, judicial or other legal mandate or requirement to produce information and is effective only to the extent it is permitted under law. Each Party agrees to act in good faith and to reasonably cooperate with the other in protecting the confidentiality of any exchanged information including when information may be



legally compelled to be disclosed. This Agreement applies only to exchanged information not independently available. The termination of the Agreement shall not terminate any rights or obligations SDCP or Respondent may have under this provision.

VII. Assignment

Neither Party may assign this Agreement or any of the rights or obligations hereunder (including, without limitation, its rights and duties of performance) to any third party or entity without the prior written consent of the other Party which shall not be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of each of the Parties hereto and, except as otherwise provided herein, their respective legal successors and permitted assigns.

VIII. Notices

All notices required under this Agreement 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. Notice 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:

Respondent:

SDCP: San Diego Community Power
Attn: Managing Director, Power Services
PO Box 12716
San Diego, CA 92112

IX. Counterparts

This Agreement may be signed in counterparts and delivered electronically, each of which when signed and delivered shall be deemed an original, all of which taken together shall constitute one agreement.

X. Attorney's Fees.

In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

XI. Governing Law & Venue.

This Agreement shall be governed by and construed under the laws of the State of California, without regard to conflicts of laws. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be any federal or state court of competent jurisdiction



located in San Diego County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. The Parties agree to waive any and all rights to request that an action be transferred for trial to another county.

XII. Limitation of Damages.

Neither Party shall be liable to the other for any lost or prospective profits or any other consequential, incidental, special, punitive, indirect or exemplary damages under or in respect of this Agreement.

XIII. Entire Agreement.

This Agreement contains the entire understanding between the Parties relating to the obligations of the Parties described in this Agreement.

[Signatures Follow on Next Page.]



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set opposite their signatures. The effective date of this Agreement shall be the date this Agreement is signed by SDCP.

SAN DIEGO COMMUNITY POWER, a California
joint powers authority

Date: _____

By: _____

[INSERT RESPONDENT ENTITY NAME]

Date: _____

By: _____

