



**Regular Meeting of the Board of Directors of  
San Diego Community Power (Community Power)**

**Thursday, January 23, 2025  
5:00 p.m.**

**Don L. Nay Port Administration Boardroom  
3165 Pacific Hwy.  
San Diego, CA 92101**

The meeting will be held in person at the above date, time and location(s). Members of the Board of Directors and members of the public may attend in person. Under certain circumstances, Directors may also attend and participate in the meeting virtually pursuant to the Brown Act (Gov. Code § 54953). As a convenience to the public, Community Power provides a call-in option and internet-based option for members of the public to virtually observe and provide public comments at its meetings. Additional details on in-person and virtual public participation are below. Please note that, in the event of a technical issue causing a disruption in the call-in option or internet-based option, the meeting will continue unless otherwise required by law, such as when a Board Member is attending the meeting virtually pursuant to certain provisions of the Brown Act.

Note: Any member of the public may provide comments to the Board of Directors on any agenda item. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board of Directors as a whole through the Chair. Comments may be provided in one of the following manners:

1. Providing oral comments during a meeting. Anyone attending in person desiring to address the Board of Directors is asked to fill out a speaker's slip and present it to the Clerk of the Board. To provide remote comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing \*9. Comments will be limited to three (3) minutes.
2. Written Comments. Written public comments must be submitted prior to the start of the meeting to [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org). Please indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to Members of the Board. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting.

**AGENDA – BOARD OF DIRECTORS – SAN DIEGO COMMUNITY POWER**

Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Members of Board, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please send it to [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org).

The public may participate using the following remote options:

Teleconference Meeting Webinar <https://sdcommunitypower-org.zoom.us/j/94274587066>

Telephone (Audio Only) (669) 900-6833 or (346) 248-7799 | Webinar ID: 947 9407 5133

## **WELCOME**

## **CALL TO ORDER**

## **ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## **SPECIAL PRESENTATIONS AND INTRODUCTIONS**

- Introduction of New Community Power Staff
- Introduction of Newly Appointed Board Members
- Recognition to Director McCann and Chair LaCava for their Service to Community Power

## **ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA**

## **PUBLIC COMMENTS**

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board. Members of the public may provide a comment in either manner described above.

## **CONSENT CALENDAR**

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

1. **Approve December 12, 2024, Meeting Minutes**
2. **Receive and File Treasurer's Report for Period Ending November 30, 2024**

3. **Receive and File Update on Programs**
4. **Receive and File Update on Power Resources**
5. **Receive and File Update on Customer Operations**
6. **Receive and File Update on Human Resources**
7. **Receive and File Update on Marketing, Public Relations, and Local Government Affairs**
8. **Receive and File Update on Community Advisory Committee**
9. **Approve the 2025 Community Advisory Committee Work Plan**

### **REGULAR AGENDA**

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

#### **10. Election of Officers for Community Power for Calendar Year 2025**

Recommendation: Elect a Chair and Vice Chair for Calendar Year 2025.

#### **11. Appointment of a Member to the Finance and Risk Management Committee**

Recommendation: Approve the Chair's Nomination of a New Member to the Finance and Risk Management Committee.

#### **12. Adopt Resolution No. 2025-01 Approving the San Diego Regional Energy Network (SDREN) Energy Efficiency Programs and Budget Agreement with San Diego Gas and Electric (SDG&E) for Years 2024-2027 and Authorize the Chief Executive Officer to Accept, Appropriate and Expend the SDREN Funds in an Amount Not-to-Exceed \$124,274,206 in the FY 2024-25 Capital Budget and FY 2025-29 Capital Investment Plan, and Related Actions**

Recommendation: Adopt Resolution No. 2025-01 (Attachment A) Approving and Authorizing the Chief Executive Officer to: (1) Execute the San Diego Regional Energy Network (SDREN) Energy Efficiency Programs and Budget Agreement with SDG&E and to Negotiate and Execute any Amendments, Extensions, or Renewals of such Agreement (Attachment B); and (2) accept, Appropriate, and Expend the SDREN Funds in an Amount not to exceed \$124,274,206 in the FY 2024-25 Capital Budget and FY 2025-29 Capital Investment Plan; and (3) Take all Necessary Action to Administer, Monitor, Manage, and Ensure Compliance with the Agreement and to Negotiate and Execute Contracts with Third Parties to Implement the Agreement or Use of Funds.

**13. Approval of Power Purchase Agreement Portfolio with Luminia CA DevCo I, LLC**

Recommendation: Approve Power Purchase Agreements and a Framework Agreement, in substantially final forms, for a Local RFO portfolio with Luminia CA DevCo I, LLC, for up to 3.7 MW of rooftop(s) photovoltaic (PV) generation for twenty years and authorize the Chief Executive Officer to execute the agreements.

**14. Approval of Power Purchase Agreement with Luminia CA DevCo 4, LLC**

Recommendation: Approve Power Purchase Agreement, in substantially final form, with Luminia CA DevCo 4, LLC, for 1.7 MW of rooftop and carport canopy photovoltaic (PV) generation for twenty years and authorize the Chief Executive Officer to execute the agreement.

**15. Approve a Contract with Maher Accountancy for General Accounting Professional Services in an Up-to-Amount, Not-to-Exceed \$1,185,000 from February 1, 2025, Through January 31, 2028, and for Two Optional One-Year Extensions for a Total Up-to-Amount, Not-to-Exceed \$2,069,700, and Authorize the Chief Executive Officer to Execute the Contract**

Recommendation: Approve a Contract with Maher Accountancy for General Accounting Professional Services in an Up-to-Amount Not-to-Exceed \$1,185,000 from February 1, 2025 through January 31, 2028, and for Two Optional One-Year Extensions for a total up-to-amount, not-to-exceed \$2,069,700, and Authorize the Chief Executive Officer to Execute the Contract.

**16. Authorize the Chief Executive Officer to Enter into a Sublease Agreement with CORELATION, INC. for Office Space**

Recommendation: Authorize the Chief Executive Officer to enter into a sublease agreement with CORELATION, INC., for office space located at 2305 Historic Decatur Road, San Diego, CA, in the amount of \$638,208, plus utilities, for 24 months, with a potential option to extend for an additional year, and related documents.

**17. Approval of Community Advisory Committee Appointment for the County of San Diego (Unincorporated)**

Recommendation: Approve the Appointment of Ross Pike to the Community Advisory Committee for the County of San Diego (Unincorporated).

**18. Update on 2025 Projected Rate Changes**

Recommendation: Receive and File Update on 2025 Projected Rate Changes

**19. Update on Regulatory and Legislative Affairs**

Recommendation: Receive and File Update on Regulatory and Legislative Affairs



## **20. Update on Solar Battery Savings Program**

Recommendation: Receive and File Update on Solar Battery Savings Program.

### **CHIEF EXECUTIVE OFFICER REPORT**

Community Power Management may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified below, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

### **DIRECTOR COMMENTS**

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to Community Power business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

### **ADJOURNMENT**

The San Diego Community Power Board of Directors will adjourn to a special meeting scheduled on Friday, February 7, 2025, at 10 am.

### **Compliance with the Americans with Disabilities Act**

San Diego Community Power Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org). Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

### **Availability of Board Documents**

Copies of the agenda and agenda packet are available at <https://sdcommunitypower.org/resources/meeting-notes/>. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Public records, including agenda-related documents, can be requested electronically at [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org) or by mail to San Diego Community Power, P.O. BOX 12716, San Diego, CA 92112. The documents may also be posted on Community Power's website. Such public records are also available for inspection, by contacting [clerkoftheboard@sdcommunitypower.org](mailto:clerkoftheboard@sdcommunitypower.org) to arrange an appointment.



**SAN DIEGO COMMUNITY POWER (COMMUNITY POWER)  
BOARD OF DIRECTORS**

Don L. Nay Port Administration Boardroom  
3165 Pacific Hwy.  
San Diego, CA 92101

**SPECIAL MEETING MINUTES  
December 12, 2024**

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**WELCOME**

**CALL TO ORDER**

Chair LaCava called the Community Power Board of Directors special meeting to order at 5:35 p.m.

**ROLL CALL**

**PRESENT:** Chair LaCava, City of San Diego; Director McCann, City of Chula Vista; Director Aguirre, City of Imperial Beach (via Zoom Teleconference); Interim Director Cazares, City of La Mesa; and Alternate Director Bush, City of National City (via Zoom Teleconference, AB 2449 exemption)

**ABSENT:** Vice Chair Lawson-Remer, County of San Diego

Ms. Hernandez read AB 2449 "Just Cause" exemption for Alternate Director Bush and confirmed he had no one over 18 years of age present in the room with him.

**Staff Present:** Chief Executive Officer Burns; Chief Operating Officer Clark; General Counsel Tyagi; Chief Commercial Officer Vosburg; Regulatory Manager Gunther; Data Analytics Manager Hanke; Director of Public Affairs Lebron; Rates and Strategy Manager Lu; Senior Manager Strategic Partnerships Friedman, Clerk of the Board Hernandez; and Senior Executive Assistant Porras

**PLEDGE OF ALLEGIANCE**

Chair LaCava led the Pledge of Allegiance.

**SPECIAL PRESENTATIONS AND INTRODUCTIONS**

Chair LaCava acknowledged the Kumeyaay Nation and all the original stewards of the land.

- **Introduction of New San Diego Community Power Staff**

Chair LaCava welcomed new employee Frank Alfaro, Finance Manager, to introduce himself.

- **Introduction of newly appointed Board members**

Chair LaCava welcomed interim Director Cazares from City of La Mesa.

### **ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA**

There were no items added, withdrawn, or reordered on the agenda.

### **PUBLIC COMMENTS**

There were no public comments.

### **CONSENT CALENDAR**

1. **Approve November 21, 2024, Meeting Minutes**
2. **Receive and File Treasurer's Report for Period Ending September 30, 2024**
3. **Receive and File Update on Programs**
4. **Receive and File Update on Power Resources**
5. **Receive and File Update on Customer Operations**
6. **Receive and File Update on Human Resources**
7. **Receive and File Update on Marketing, Public Relations, and Local Government Affairs**
8. **Receive and File Update on Regulatory and Legislative Affairs**
9. **Receive and File Update on Community Advisory Committee**
10. **Receive and File Update on San Diego Community Power Network Request for Qualifications**
11. **Adoption of Resolution No. 2024-12, A Resolution of the Board of Directors of San Diego Community Power Designating Dates, Time, and the Location for Regular Meetings for Calendar Year 2025**
12. **Annual Energy Usage Voting Share Update**

There were no public comments on Consent Item Nos. 1-12.

Motioned by Director McCann and seconded by Director Aguirre to approve Consent Calendar Item Nos. 1 through 12. The motion carried 5/0 by Roll Call Vote as follows:

AYES: Chair LaCava, Directors Aguirre, McCann, Cazares, and Alternate Director Bush  
NOES: None  
ABSTAINED: None  
ABSENT: Vice Chair Lawson-Remer

### **REGULAR AGENDA**

**13. Approve a Contract in Substantially Similar Form to Attachment A for the Enterprise Data Platform (EDP) Development and Deployment with Harman Connected Services, Inc. for a Not-to-Exceed Amount of \$850,000 Over Twelve Months, and Authorize the Chief Executive Officer to Execute the Contract**

Mr. Hanke provided an overview of the Enterprise Data Platform (EDP) Development contract with Harman Connected Services, Inc.

There were no public comments on Item No. 13.

After Board member discussion, Director McCann motioned and seconded by Director Cazares to approve a Contract for Enterprise Data Platform (EDP) development and deployment with Harman Connected Services, Inc. for a not-to-exceed amount of \$850,000 over twelve months, and authorize the Chief Executive Officer to execute the contract. The motion carried 5/0 by Roll Call Vote as follows:

AYES: Chair LaCava, Directors Aguirre, McCann, Cazares, and Alternate Director Bush  
NOES: None  
ABSTAINED: None  
ABSENT: Vice Chair Lawson-Remer

**14. Approve a Contract with the San Diego Padres for Marketing, Promotional, Outreach, Educational and other Sponsorship-Related Activities in an Amount Not-to-Exceed \$882,700 from January 1, 2025, through October 31, 2027, and Authorize the Chief Executive Officer to Execute the Contract**

Mr. Friedman presented an overview of the contract with the San Diego Padres.

There were no public comments on Item No. 14.

Alternate Director Cazares stated that she would be voting in favor of this contract as a representative of the City of La Mesa and not the San Diego Chamber of Commerce.

After Board member discussion, Director McCann motioned and seconded by Director Cazares to approve a contract with the San Diego Padres for marketing, promotional, outreach, educational and other sponsorship-related activities in an amount not to exceed \$882,700 from

January 1, 2025, through October 31, 2027, and authorize the Chief Executive Officer to execute the contract. The motion carried with four affirmative votes and one dissenting vote by Roll Call Vote as follows:

AYES: Chair LaCava, Directors McCann, Cazares, and Alternate Director Bush  
NOES: Director Aguirre  
ABSTAINED: None  
ABSENT: Vice Chair Lawson-Remer

**15. Approval of Allocation from PG&E of GHG-Free attributes from Diablo Canyon Nuclear Power Plant for 2025-2030**

Mr. Vosburg and Mr. Gunther presented the allocation from PG&E of GHG-Free attributes from Diablo Canyon Nuclear Power Plant for 2025-2030.

Chair LaCava announced that a public comment was submitted to Community Power from Nina Babiarz, and a hard copy was presented to the board.

Peter Andersen and Charles Langley provided comments on Item No. 15.

After Board member discussion, Director Cazares motioned and seconded by Chair LaCava to Elect to accept Community Power's allocation from PG&E of GHG-Free attributes from Diablo Canyon Nuclear Power Plant for 2025 through 2030 and authorize the Chief Executive Officer to execute the associated transaction confirmations via annual allocation processes, or as otherwise required. The motion carried 5/0 by Roll Call Vote as follows:

AYES: Chair LaCava, Directors McCann, Aguirre, Cazares, and Alternate Director Bush  
NOES: None  
ABSTAINED: None  
ABSENT: Vice Chair Lawson-Remer

**16. Update on 2025 Projected Rate Changes**

Mr. Lu provided an update on 2025 Projected Rate Changes.

There were no public comments on Item No. 16.

The Board received and filed 2025 Projected Rate Changes Update.

**17. Approve the Marketing Community Initiative Partnership with TEGNA through December 31, 2025, in an Amount Not-to-Exceed \$174,044, and Authorize the Chief Executive Officer to Execute the Agreement**

Ms. Lebron presented the Marketing Community Initiative Partnership with TEGNA.

There were no public comments on Item No. 17.

After Board member discussion, Director McCann motioned and seconded by Director Aguirre to approve the Marketing Community Initiative Partnership with TEGNA through December 31, 2025, in an amount not to exceed \$174,044, and authorize the Chief Executive Officer to execute the agreement. The motion carried 5/0 by Roll Call Vote as follows:

AYES: Chair LaCava, Directors McCann, Aguirre, Cazares, and Alternate Director Bush  
NOES: None  
ABSTAINED: None  
ABSENT: Vice Chair Lawson-Remer

### **CHIEF EXECUTIVE OFFICER REPORT**

CEO Burns reported on Community Power's ongoing efforts and recent activities and events.

### **DIRECTOR COMMENTS**

Chair LaCava announced he will step down after his third year on Community Power. He will be here in January for the chair and vice chair elections.

### **ADJOURNMENT**

Community Power Board meeting adjourned at 6:57 p.m. to the next regular Board meeting scheduled on Thursday, January 23, 2025, at 5:00 p.m.

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Maricela Hernandez, MMC, CPMC  
Clerk of the Board



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 2**

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**TO:** Board of Directors

**FROM:** Eric W. Washington, Chief Financial Officer/Treasurer

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Treasurer's Report for Period Ending 11/30/2024

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Receive and File Treasurer's Report for Period Ending 11/30/24.

**BACKGROUND:**

San Diego Community Power (SDCP) maintains its accounting records on a full accrual basis in accordance with Generally Accepted Accounting Principles (GAAP) as applicable to governmental enterprise funds. SDCP has prepared its year-to-date financial statements for the five-month period ended November 30, 2024, along with budgetary comparisons.

In an effort to increase public transparency and in alignment with section 1.a of the SDCP Delegated Contract Authority Policy, SDCP will also report newly executed contracts between \$50,000 and \$125,000 for goods and services in the Treasurer's Report.

SDCP additionally reports monthly metrics during its Board meetings as part of its Update on Back-Office Operations. As part of the Treasurer's Report, certain key metrics related to risk are presented during Financial and Risk Management Committee (FRMC) meetings.

On June 27, 2024, the SDCP Board of Directors (Board) approved an operating budget for Fiscal Year 2024-25 that included net operating revenues of \$1,177,925,889 total expenses of \$1,143,919,262 and a resulting net position of \$34,006,627. The approved Fiscal Year 2024-25 budget also includes a capital budget to fund 16 projects, totaling 23 active projects during the fiscal year for \$16,434,280.



## ANALYSIS AND DISCUSSION:

### Financial Results

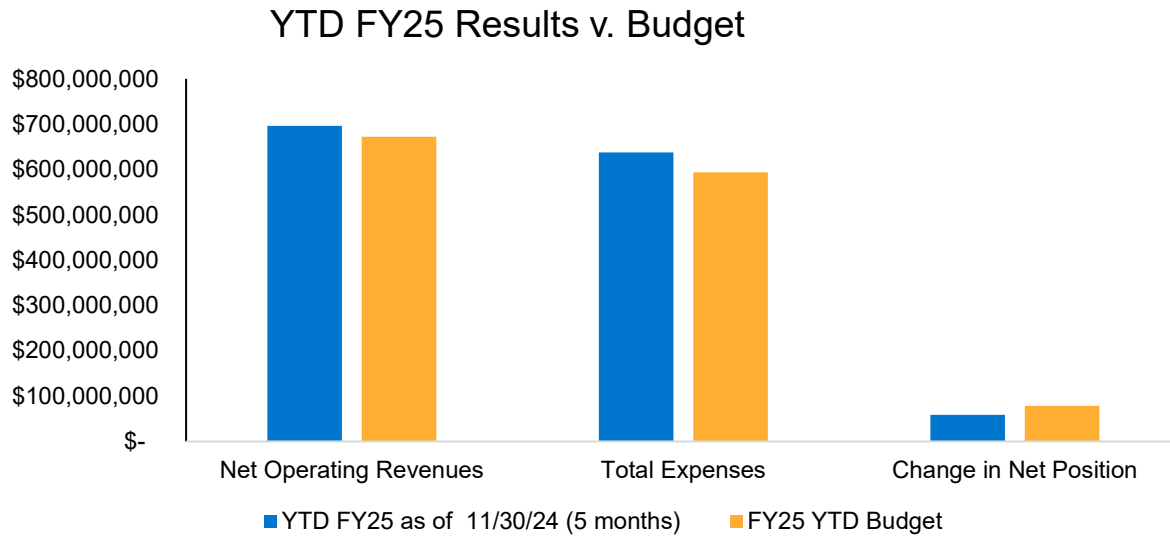
Actual financial results for the period ended 11/30/24: \$696.0 million in net operating revenues were reported compared to \$672.5 million budgeted for the period. \$637.5 million in total expenses were reported (including \$610.1 million in energy costs) compared to \$593.7 million budgeted for the period (including \$555.2 million budgeted for energy costs). After expenses, SDCP's change in net position of \$58.6 million was reported year-to-date for Fiscal Year 2024-25. The following is a summary of the actual results compared to the Fiscal Year 2024-25 Amended Budget.

Table 1: Budget Comparison Versus Actual Result

Budget Comparison					
	YTD FY25 as of 11/30/24 (5 months)	FY25 YTD Budget	Budget Variance (\$)	Budget (%)	
Net Operating Revenues	\$ 696,048,805	\$ 672,519,268	\$ 23,529,537	103%	
Total Expenses	\$ 637,476,640	\$ 593,720,209	\$ 43,756,431	107%	
<b>Change in Net Position</b>	<b>\$ 58,572,165</b>	<b>\$ 78,799,059</b>	<b>\$ (20,226,894)</b>	<b>-26%</b>	

- Net operating revenues finished \$23.5 million (or 3.0 percentage points) over the budget primarily due to slightly higher-than-expected customer load correlated with warmer weather in the summer months of calendar year 2024.
- Operating expenses finished \$43.8 million (or 7.0 percentage points) over the budget due to higher-than-expected resource adequacy (RA) costs related to modified cost allocation mechanism (MCAM) local RA and RA penalties which were not accounted for in the budget. Additionally, financial results included higher-than budgeted CAISO costs which are expected to be offset by the end of the fiscal year as Community Power realizes savings from a recent November 2024 CAISO congestion revenue rights auction. The energy results were partially offset by savings in non-energy costs.

Figure 1: Budget Comparison versus Actual Results



For the five-month period ending 11/30/24, SDCP contributed \$58,572,165 to its net position compared to the expected contribution of \$78,799,059 per the Fiscal Year 2024-25 budget. Total SDCP reserves at the end of the period were \$417,172,255 based on unrestricted cash and cash equivalents. When including the access to the unused portion of the line of credit, total liquidity was \$582,672,255. SDCP has a total Fiscal Year 2024-25 year-end unrestricted cash reserve target of \$556,027,397 which is equivalent to 180-days of total operating expenses as set in SDCP's Reserve Policy and Strategic Goals

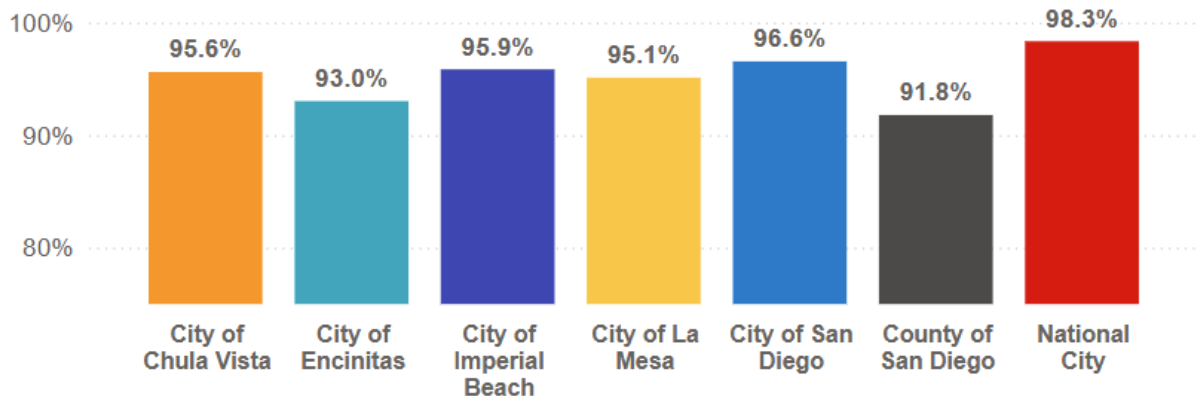
### **Contract Execution between \$50,000 and \$125,000 Report**

During the month of December 2024, SDCP did not execute any contracts between \$50,000 and \$125,000.

## Customer Risk Metrics

Figure 2: Participation Rates as of 1/7/2025

### Participation by Jurisdiction



Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,441	94,124	95.6%
City of Encinitas	Power100	28,763	26,758	93.0%
City of Imperial Beach	PowerOn	10,852	10,402	95.9%
City of La Mesa	PowerOn	29,364	27,928	95.1%
City of San Diego	PowerOn	623,534	602,053	96.6%
County of San Diego	PowerOn	190,414	174,790	91.8%
National City	PowerOn	19,359	19,039	98.3%
<b>Total</b>		<b>1,000,727</b>	<b>955,094</b>	<b>95.4%</b>

The Phase 4 mass enrollment process in National City and Unincorporated County of San Diego for Non-Net Energy Metering (NEM) customers was officially completed as of May 2023. The participation rate for SDCP reflects full enrollment of current member agencies. We are reporting on the opt outs and eligible accounts associated with the phase based on those accounts that we have noticed for enrollment on a rolling basis as of the reporting month.

Staff are also presenting the state of SDCP Arrearages related to financial risk for FRMC consideration and for regular review. Additional metrics can be added by request. The below arrearage data includes SDCP's Receivables aged 120+ Days as of 1/3/2025.

Figure 3: State of SDCP Arrearages as of 1/07/2025

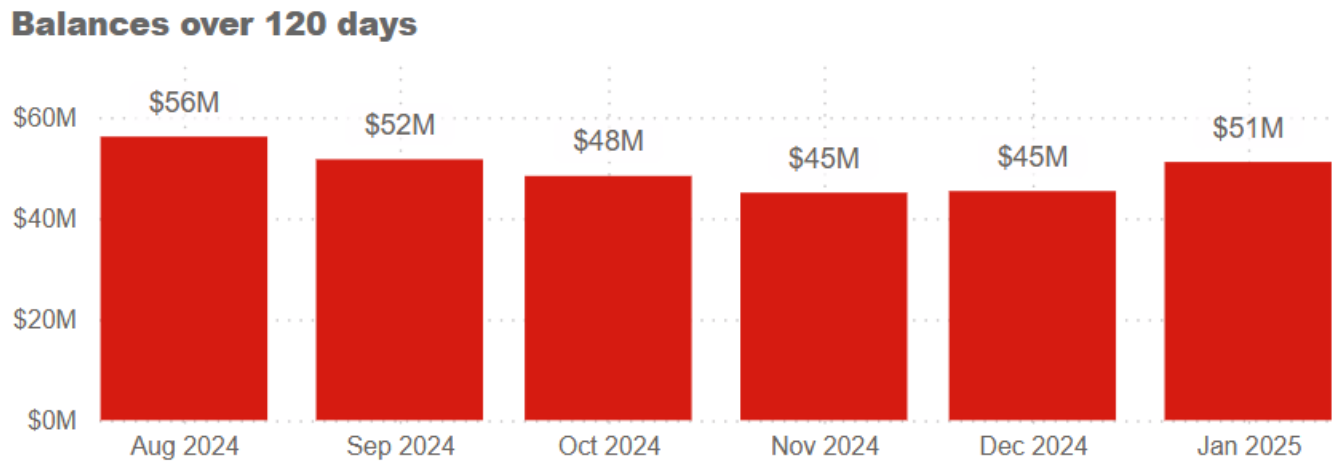
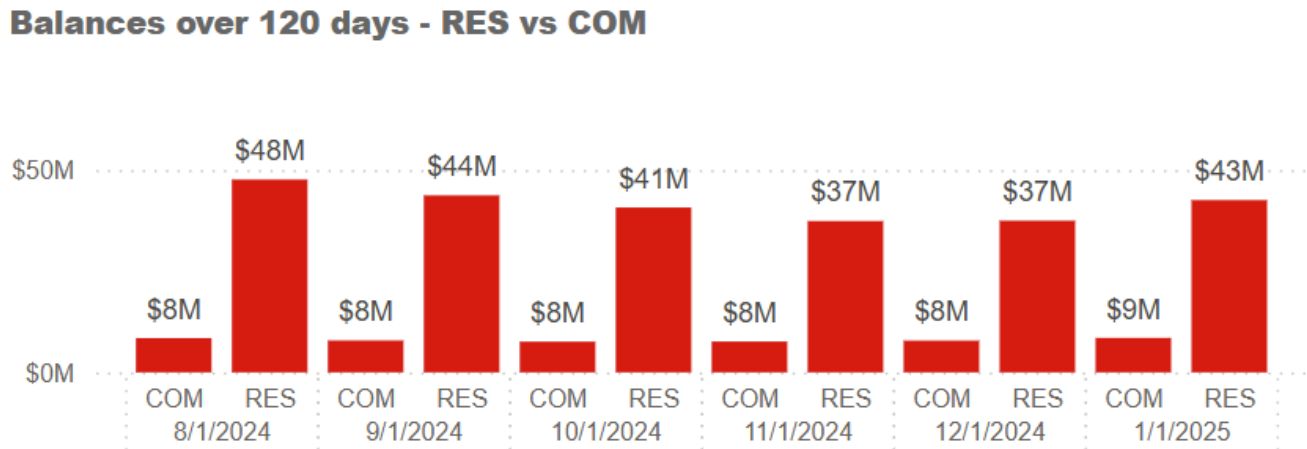


Figure 4: State of SDCP Arrearages Residential vs Commercial as of 1/07/2025



**FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

The report was reviewed by the Finance and Risk Management Committee (FRMC) on January 16, 2025.

**ATTACHMENTS:**

Attachment A: 2024 Year-to-Date Period Ended 11/30/24 Financial Statements.

# ITEM 2

# ATTACHMENT A



## ACCOUNTANTS' COMPILATION REPORT

Management  
San Diego Community Power

Management is responsible for the accompanying financial statements of San Diego Community Power (a California Joint Powers Authority) which comprise the statement of net position as of November 30, 2024, and the related statement of revenues, expenses, and changes in net position, and the statement of cash flows for the five months then ended in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. San Diego Community Power's annual audited financial statements include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

*Maher Accountancy*

San Rafael, CA  
January 2, 2025

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF NET POSITION**  
**As of November 30, 2024**

**ASSETS**

Current assets	
Cash and cash equivalents - unrestricted	\$ 417,172,255
Cash and cash equivalents - restricted	500,000
Accounts receivable, net of allowance	124,681,246
Accrued revenue	47,642,265
Prepaid expenses	3,402,107
Other receivables	5,028,804
Deposits	13,898,240
Investments	1,434,961
Total current assets	<u>613,759,878</u>
Noncurrent assets	
Cash and cash equivalents - restricted	1,147,000
Investments	32,962,804
Capital assets, net of depreciation and amortization	546,361
Total noncurrent assets	<u>34,656,165</u>
Total assets	<u><u>648,416,043</u></u>

**LIABILITIES**

Current liabilities	
Accrued cost of electricity	141,940,878
Accounts payable	1,232,368
Other accrued liabilities	2,160,740
State surcharges payable	394,947
Deposits - energy suppliers	3,623,000
Bank note payable	47,000,000
Lease liability	531,899
Total current liabilities	<u>196,883,832</u>
Noncurrent liabilities	
Deposits - energy suppliers	4,374,000
Total noncurrent liabilities	<u>4,374,000</u>
Total liabilities	<u><u>201,257,832</u></u>

**NET POSITION**

Restricted for security collateral	1,647,000
Unrestricted	445,511,211
Total net position	<u><u>\$ 447,158,211</u></u>



**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF REVENUES, EXPENSES**  
**AND CHANGES IN NET POSITION**  
**Five Months Ended November 30, 2024**

**OPERATING REVENUES**

Electricity sales, net	\$ 695,672,816
Grant revenue	352,500
Other income	1,114,164
Total operating revenues	<u>697,139,480</u>

**OPERATING EXPENSES**

Cost of electricity	611,223,708
Contract services	8,404,539
Staff compensation	6,205,974
Other operating expenses	3,950,336
Depreciation and amortization	213,483
Total operating expenses	<u>629,998,040</u>
Operating income	<u>67,141,440</u>

**NON-OPERATING REVENUES (EXPENSES)**

Investment income	4,901,499
Interest expense	(267,110)
Nonoperating revenues (expenses), net	<u>4,634,389</u>

**CHANGE IN NET POSITION**

	71,775,829
Net position at beginning of year	<u>375,382,382</u>
Net position at end of year	<u><u>\$ 447,158,211</u></u>

**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF CASH FLOWS**  
**Five Months Ended November 30, 2024**

**CASH FLOWS FROM OPERATING ACTIVITIES**

Receipts from customers	\$ 704,825,926
Receipts of supplier security deposits	3,750,000
Other operating receipts	1,444,470
Payments to suppliers for electricity	(585,356,486)
Payments for goods and services	(15,989,665)
Payments for staff compensation and benefits	(5,958,243)
Payments for deposits and collateral	(1,083,550)
Payments of state surcharges	(1,235,027)
Net cash provided by operating activities	<u>100,397,425</u>

**CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES**

Proceeds from bank note	55,500,000
Principal payments - bank note	(8,500,000)
Interest payments	(149,739)
Net cash provided (used) by noncapital financing activities	<u>46,850,261</u>

**CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Payments of lease liability	(256,950)
-----------------------------	-----------

**CASH FLOWS FROM INVESTING ACTIVITIES**

Investment income received	4,456,210
Purchase of investments	(34,069,801)
Net cash provided (used) by investing activities	<u>(29,613,591)</u>

Net change in cash and cash equivalents	117,377,145
Cash and cash equivalents at beginning of year	301,442,110
Cash and cash equivalents at end of year	<u><u>\$ 418,819,255</u></u>

**Reconciliation to the Statement of Net Position**

Cash and cash equivalents (unrestricted)	\$ 417,172,255
Restricted cash - current	500,000
Restricted cash - noncurrent	1,147,000
Cash and cash equivalents	<u><u>\$ 418,819,255</u></u>

**NONCASH INVESTING ACTIVITIES**

Unrealized appreciation and timing differences in investment income	\$ 445,289
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**SAN DIEGO COMMUNITY POWER**  
**STATEMENT OF CASH FLOWS (continued)**  
**Five Months Ended November 30, 2024**

**RECONCILIATION OF OPERATING INCOME TO NET  
CASH PROVIDED BY OPERATING ACTIVITIES**

Operating income	\$ 67,141,440
Adjustments to reconcile operating income to net cash provided by operating activities	
Depreciation and amortization expense	213,483
(Increase) decrease in:	
Accounts receivable, net	(21,169,081)
Accrued revenue	29,221,158
Prepaid expenses	31,616,293
Other receivables	977,379
Deposits	(1,736,041)
Increase (decrease) in:	
Accrued cost of electricity	(6,175,438)
Accounts payable	(3,775,509)
Other accrued liabilities	899,736
State surcharges payable	(133,995)
Deposits - energy suppliers	3,318,000
Net cash provided by operating activities	<u><u>\$ 100,397,425</u></u>



## ACCOUNTANTS' COMPILATION REPORT

Board of Directors  
San Diego Community Power

Management is responsible for the accompanying operating fund and capital investment program fund budgetary comparison schedules of San Diego Community Power (SDCP), a California Joint Powers Authority, for the five months ended November 30, 2024, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

These special purpose statements are prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of SDCP.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. SDCP's annual audited financial statements will include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to SDCP because we performed certain accounting services that impaired our independence.

*Maher Accountancy*

San Rafael, CA  
January 2, 2025

**SAN DIEGO COMMUNITY POWER  
OPERATING FUND  
BUDGETARY COMPARISON SCHEDULE  
Five Months Ended November 30, 2024**

	Year-to-Date				Annual	
	Budget	Actual	Budget Variance (Under) Over	Actual/ Budget %	Budget	Budget Remaining
<b>REVENUES AND OTHER SOURCES</b>						
Gross Ratepayer Revenues	704,208,658	\$ 708,063,935	3,855,277	101%	\$ 1,233,400,000	\$ 525,336,065
Less: Uncollectible Customer Accounts	(31,689,390)	(12,391,119)	19,298,271	39%	(55,500,000)	(43,108,881)
Grant Revenue	-	352,500	352,500	na	-	(352,500)
Other Income	-	23,489	23,489	na	-	(23,489)
Total Revenues and Other Sources	<u>672,519,268</u>	<u>696,048,805</u>	<u>23,529,537</u>		<u>1,177,900,000</u>	<u>481,851,195</u>
<b>OPERATING EXPENSES</b>						
Cost of Energy	555,242,158	610,133,033	54,890,875	110%	1,073,700,000	463,566,967
Professional Services and Consultants	10,320,513	7,810,350	(2,510,163)	76%	24,800,000	16,989,650
Personnel Costs	7,736,487	6,205,974	(1,530,513)	80%	18,600,000	12,394,026
Marketing and Outreach	1,262,131	940,655	(321,476)	75%	3,000,000	2,059,345
General and Administration	3,427,253	1,384,391	(2,042,862)	40%	7,400,000	6,015,609
Total Operating Expenses	<u>577,988,542</u>	<u>626,474,403</u>	<u>48,485,861</u>		<u>1,127,500,000</u>	<u>501,025,597</u>
Operating Income (Loss)	<u>94,530,726</u>	<u>69,574,402</u>	<u>(24,956,324)</u>		<u>50,400,000</u>	<u>(19,174,402)</u>
<b>NON-OPERATING REVENUES (EXPENSES)</b>						
Investment Income	-	4,901,499	4,901,499	na	-	(4,901,499)
Interest and Related Expenses	(531,667)	(703,736)	(172,069)	132%	(1,300,000)	(596,264)
Transfer to Capital Investment Program	<u>(15,200,000)</u>	<u>(15,200,000)</u>	<u>-</u>	100%	<u>(15,200,000)</u>	<u>-</u>
Total Non-Operating Revenues (Expenses)	<u>(15,731,667)</u>	<u>(11,002,237)</u>	<u>4,729,430</u>		<u>(16,500,000)</u>	<u>(5,497,763)</u>
<b>NET CHANGE</b>	<u>\$ 78,799,059</u>	<u>\$ 58,572,165</u>	<u>\$ (20,226,894)</u>		<u>\$ 33,900,000</u>	<u>\$ (24,672,165)</u>

**SAN DIEGO COMMUNITY POWER  
CAPITAL INVESTMENT PROGRAM FUND  
BUDGETARY COMPARISON SCHEDULE  
Five Months Ended November 30, 2024**

	<u>Annual Budget</u>	<u>YTD Actual</u>	<u>Budget Remaining</u>
<b>REVENUES AND OTHER SOURCES</b>			
Transfer in from Operating Fund	<u>\$ 15,200,000</u>	<u>\$ 15,200,000</u>	<u>\$ -</u>
 <b>EXPENDITURES AND OTHER USES</b>			
Program expenditures	<u>16,400,000</u>	<u>2,034,829</u>	<u>(14,365,171)</u>
Net increase (decrease) in fund balance	<u><u>\$ (1,200,000)</u></u>	13,165,171	
Fund balance at beginning of period		<u>3,492,291</u>	
Fund balance at end of period		<u><u>\$ 16,657,462</u></u>	



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 3**

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**TO:** Board of Directors

**FROM:** Colin Santulli, Director of Programs

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Update on Programs

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Receive and file update on customer energy programs.

**BACKGROUND:**

Staff will provide regular updates to the Board of Directors (“Board”) regarding the following Community Power customer energy programs: Commercial Programs, Residential Programs, Flexible Load Programs, Solar and Energy Storage Programs, and San Diego Regional Energy Network.

**ANALYSIS AND DISCUSSION:**

Updates on customer energy programs are detailed below.

**Commercial Programs**

***Commercial Application Assistance Pilot Project***

Status and Next Steps: Please refer to [Item 3](#) of the December 2024 Board staff report for the most recent update on this pilot project.

***Efficient Refrigeration Pilot Project***

Status and Next Steps: Please refer to [Item 3](#) of the December 2024 Board staff report for the most recent update on this pilot project.

***FLEXmarket Pilot Project***

Status and Next Steps: Please refer to [Item 3](#) of the March 2024 Board staff report for the most recent update on this pilot project.



## **Residential Programs**

### ***California Energy Commission (“CEC”) Equitable Building Decarbonization Direct Install (“EBD DI”) Program***

**Status and Next Steps:** Please refer to [Item 3](#) of the November 2024 Board staff report for the most recent update on this program.

## **Flexible Load Programs**

### ***Smart Home Flex Pilot Project***

**Status:** Staff has been working with Virtual Peaker on the implementation of Community Power’s Distributed Energy Resources Management System (“DERMS”) through a pilot project called Smart Home Flex. The pilot will enroll 2,000 existing smart thermostats from ecobee and Google Nest in early 2025 to test the capabilities of the DERMS, validate the value stream, and assess customer satisfaction. Starting Summer 2025, Community Power will initiate “Smart Flex Events” – times when energy demand and grid stress are anticipated to be high. When a Smart Flex Event is initiated or “called”, approved customers will receive a notification and the temperature settings on their smart thermostat will be automatically adjusted to reduce energy usage during the Smart Flex Event. Staff will be working with smart thermostat original equipment manufacturers to leverage their smart apps to send out notifications to customers to enroll. Customers that apply and are approved will receive an enrollment incentive of \$25.

**Next Steps:** Staff will work with smart thermostat original equipment manufacturers to begin customer outreach and enrollment.

### ***Managed Charging Pilot Project***

**Status:** Staff has been working with Optiwatt on the implementation of the residential managed charging/V1G pilot project. There will be 1,000 participants enrolled over the course of the two-year pilot. The optimized charging schedules created for pilot participants will automatically direct their electric vehicles to charge when energy is cheaper, reducing strain on the electrical grid during peak demand periods and lowering their electricity bills absent participation. This pilot will offer an enrollment incentive of \$50 and a monthly participation incentive of \$5.

**Next Steps:** Staff will continue working with Optiwatt on the implementation of this pilot, targeting a Q1 CY 2025 launch.

## **Solar and Energy Storage Programs**

### ***Disadvantaged Communities–Single-Family Affordable Solar Homes (“DAC-SASH”) Readiness Pilot Project***

**Status and Next Steps:** GRID Alternatives (“GRID”) has identified 25 projects that are eligible to participate in the DAC-SASH Readiness Pilot, 80% of which are located in the Transformative Climate Communities Rooted in Comunidad, Cultivating Equity (RICCE) project area. As of December 2024, ten projects have moved into the contracting or implementation phase. GRID expects to complete roof repair/replacement work by March

2025 due to the lengthy contracting process required to enroll homes in the DAC-SASH program.

#### ***Net Energy Metering (“NEM”) and Net Billing Tariff (“NBT”)***

Status: Please refer to [Item 2](#) of the December 2023 Board staff report for the most recent update on this program.

Next Steps: Staff anticipate bringing an item to the Board by Q1 CY 2025 to update the tariff with support for virtual and aggregation versions of NBT.

#### ***Solar Battery Savings (“SBS”) Program***

Status: The SBS Program closed due to funding being fully allocated on November 8, 2024. SBS had 1,636 approved projects, equating to over 2,200 batteries planned for installation. Please refer to [Item 3](#) of the December 2024 Board staff report for other updates on this program. Staff continue to process upfront incentive payments once projects are completed. Staff has requested program feedback from contractors and customers to understand improvements in future program iterations via program surveys that were distributed in December 2024.

Next Steps: Staff is bringing a stand-alone update on the pilot to the Board in January 2025.

#### ***Solar Advantage Program (previously Solar for Our Communities)***

Status and Next Steps: Previously called Solar for Our Communities, please refer to [Item 3](#) of the October 2024 Board staff report for the most recent update on this program.

#### **San Diego Regional Energy Network (“SDREN”)**

##### ***SDREN***

Status: Pending Board approval, Staff will execute the SDREN Energy Efficiency Programs and Budget Agreement for Years 2024-2027 to receive CPUC authorized funds from SDG&E to implement SDREN’s programs.

Next Steps: In January 2025, Staff is seeking Board approval of the SDREN Energy Efficiency Programs and Budget Agreement for Years 2024-2027 to receive CPUC authorized funds from SDG&E to implement SDREN’s programs. Staff continue to develop solicitation documents for future program implementors with the expectation of releasing solicitations starting in February 2025.

#### **FISCAL IMPACT:**

N/A

#### **COMMITTEE REVIEW:**

N/A

#### **ATTACHMENTS:**

N/A



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 4**

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**TO:** Board of Directors

**FROM:** Byron Vosburg, Chief Commercial Officer

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Update on Power Services

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Receive and file update on Power Services.

**BACKGROUND:**

Staff provides the updates below to the Board of Directors regarding SDCP's power energy procurement activities.

**ANALYSIS AND DISCUSSION:**

Power Services Staffing

Building out a team of experienced, knowledgeable energy professionals has long been a top priority and allows SDCP not only to solicit, negotiate, and administer contracts for energy supply effectively, but also to monitor market activity, manage risk, bring in-house several activities that have historically been completed by consultants, and to dedicate additional resources to local and distributed energy procurement and development efforts. The SDCP Power Services team is now thirteen people strong. The Power Services team has one open position currently, and is excited to continue stable, prudent growth through 2025.

Portfolio Updates

On October 2, 2024, SDCP executed an administrative amendment to the Financially Settled Toll and Energy Storage Agreement with MRP Pacifica Marketing LLC for the Border Project ("First Amendment"). This First Amendment adjusted the Expected Commercial Operation Date from June 1, 2026 to January 1, 2026 as well as clarified the MW capacity listed under Facility Description.

### Long-term Renewable Energy Solicitations

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) are becoming integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model. Moreover, the California Renewable Portfolio Standard (RPS), as modified in 2015 by Senate Bill 350, requires that SDCP provide 65% of its RPS-required renewable energy from contracts of at least ten years in length. Finally, in D.21-06-025, the California Public Utilities Commission (CPUC) required each Load Serving Entity (LSE) in California to make significant long-term purchase commitments for resource adequacy from new, incremental generation facilities that will achieve commercial operation during 2023 through 2026 for purposes of “Mid Term Reliability” (MTR). These requirements have been augmented and extended into 2026 and 2027 via D.23-02-040.

In pursuit of long-term contracts for renewable energy and storage, over the past 24 months, staff have released several RFOs and RFPs. Recent solicitations include an RFP for CAISO Cluster 15 projects in August 2024, which will serve to select renewable and storage projects that SDCP is most interested in being studied by the CAISO. Staff executed exclusivity agreements with five shortlisted projects by the December CAISO deadline for LSE’s to submit their commercial interest points. Staff also issued an “All-Source RFO” in September 2024 with an emphasis on clean, firm resources to meet MTR requirements and enhance SDGP’s portfolio. Staff shortlisted and waitlisted projects in December 2024 using SDCP’s Energy Project Evaluation Criteria and has since kicked off negotiations.

Staff remain in negotiations for additional resources that are expected to be online between 2025 and 2029. Staff and the ECWG evaluate all RFI/RFO/RFP submissions prior to entering negotiations with selected participants. Assuming that Staff and shortlisted developer(s) can agree to mutually agreeable contracts consistent with terms authorized by the ECWG, Staff then review draft terms with the SDCP Board for approval and authorization to execute the relevant documents.

### Local Development

SDCP’s rolling Local RFI remains open and, in the last twelve months, has yielded eight Board-approved contracts for local generation and storage facilities. SDCP also released an RFO for distributed renewable energy resources (DERs) which focuses on a broad range of distribution-level renewable projects within San Diego County. Staff are working with shortlisted bidders and hope to present the resulting PPAs to the Board in the coming months. Additional ongoing local initiatives include a Feed-in-Tariff Program revamp and expansion, expected early next year, and continued collaboration with member agency staff and other local agencies to identify strategic opportunities to further infill development.

As Program Administrators of the CPUC's Disadvantaged Communities Green Tariff (DAC-GT) program, SDCP completed its first round of solicitation this year and are working with shortlisted bidders and hope to present the resulting PPAs to the Board in the coming months.

SDCP's Local RFI and Feed-in Tariff remain open. More information is available about each at the links below:

- <https://sdcommunitypower.org/resources/solicitations/>
- <https://sdcommunitypower.org/programs/feed-in-tariff/>

#### Short-Term RPS Procurement

SDCP staff continues to actively manage its environmental portfolio and closely monitor the market for opportunities to optimize its renewable and carbon-free portfolios. SDCP has recently been evaluating solicitation offers, bilateral offers, and products that meet needs for multiple portfolios – creating greater value for its customers. SDCP will continue to prioritize environmental targets while also ensuring value for our customers.

#### Market Update

Due to limited resource availability in the broader Western Interconnection, lingering supply chain impacts that have delayed development of new-build energy resources, and recent implementation of tariffs and duties on foreign imports, the market for renewable energy and resource adequacy (RA) resources continues to be exceptionally tight and expensive. Staff are working with developers, industry groups, the CPUC, and CA Governor's Office and legislators to i) develop near-term solutions while also actively procuring short-term energy and capacity products and long-term energy resources to meet SDCP's portfolio needs practically and cost-effectively, and ii) to establish a portfolio of resources that will provide value to SDCP and California's clean, reliable energy needs into the future.

Despite a relatively warm summer, near-term California power markets remain soft due to declining power and gas markets throughout the US, and robust renewable generation, all of which have so far offset the impacts of drought in the Pacific Northwest and resource scarcity throughout WECC.

#### **COMMITTEE REVIEW:**

N/A

#### **FISCAL IMPACT:**

N/A

#### **ATTACHMENTS:**

N/A



## **SAN DIEGO COMMUNITY POWER Staff Report – Item 5**

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**TO:** Board of Directors

**FROM:** Lucas Utouh, Senior Director of Data Analytics and Customer Operations

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Update on Customer Operations

**DATE:** January 23, 2025

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### **RECOMMENDATION:**

Receive and file an update on various customer operations' initiatives.

### **BACKGROUND:**

Staff will provide regular updates to the Board of Directors centered around tracking customer opt actions (i.e., opt outs, opt ups and opt downs) as well as customer engagement metrics. The following is a brief overview of items pertaining to customer operations.

### **ANALYSIS AND DISCUSSION:**

#### **A) Enrollment Update**

As of December 30, 2024, Community Power is serving a cumulative total count of **955,094** active accounts.

Customers with newly established accounts or who have moved into a new service address within any and all of our member jurisdictions receive 2 post-enrollment notices through the mail at their mailing address on file within 60 days of their account start date to notify them that they have defaulted to Community Power electric generation service.

#### **B) Customer Participation Tracking**

The below charts summarize customer elections into San Diego Community Power's four (4) available service levels as of December 30, 2024

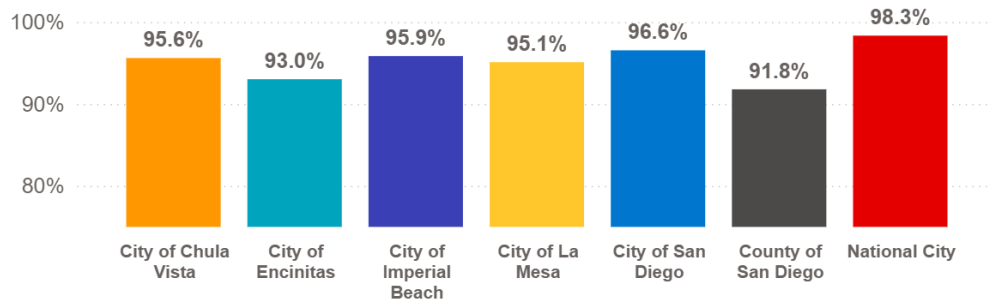
SD Community Power noted an increase in re-enrollment requests, many resulting from the launch of the Solar Battery Savings Program and the introduction of the newest lowest-cost service level, PowerBase:

**Enrolled  
Accounts**  
955,094

**Participation  
Rate**  
95.4%

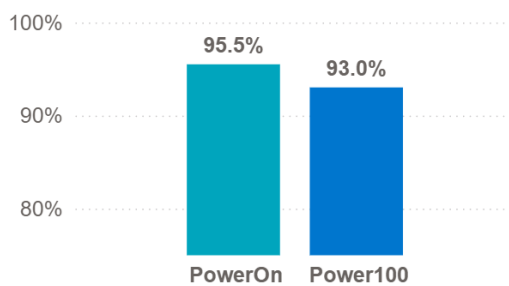
## Participation

### Participation by Jurisdiction

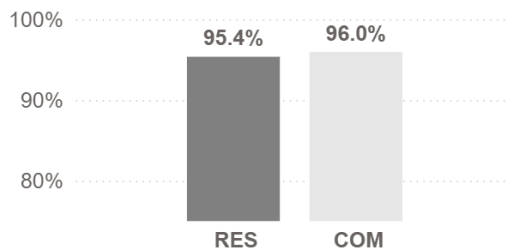


Jurisdiction	Service Option Default	Eligible Accounts	Enrolled Accounts	Participation Rate
City of Chula Vista	PowerOn	98,441	94,124	95.6%
City of Encinitas	Power100	28,763	26,758	93.0%
City of Imperial Beach	PowerOn	10,852	10,402	95.9%
City of La Mesa	PowerOn	29,364	27,928	95.1%
City of San Diego	PowerOn	623,534	602,053	96.6%
County of San Diego	PowerOn	190,414	174,790	91.8%
National City	PowerOn	19,359	19,039	98.3%
<b>Total</b>		<b>1,000,727</b>	<b>955,094</b>	<b>95.4%</b>

### Participation by Default Service Option



### Residential vs Commercial Participation



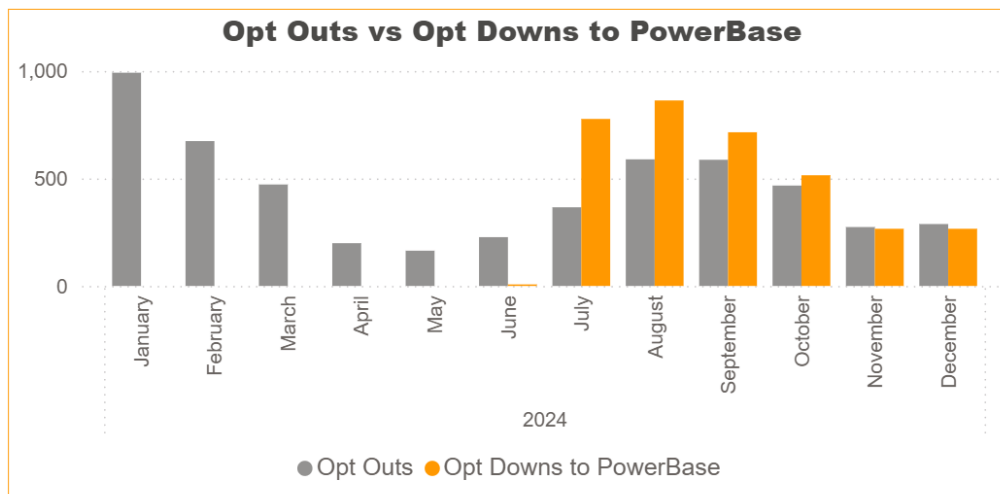


## Service Option

PowerBase		PowerOn		Power100		Power100 Green+	
Enrolled	3,233	Enrolled	917,615	Enrolled	34,245	Enrolled	1
Participation	0.3%	Participation	96.1%	Participation	3.6%	Participation	0.0%

## Service Option Enrollment Summary

Jurisdiction	Service Option Default	Enrolled Accounts	Power Base Enrolled	Power Base %	PowerOn Enrolled	PowerOn %	Power 100 Enrolled	Power 100 %	Power100 Green+ Enrolled	Power100 Green+ %
City of Chula Vista	PowerOn	94,124	269	0.3%	92,949	98.8%	906	1.0%		
City of Encinitas	Power100	26,758	121	0.5%	433	1.6%	26,204	97.9%		
City of Imperial Beach	PowerOn	10,402	26	0.2%	10,297	99.0%	79	0.8%		
City of La Mesa	PowerOn	27,928	99	0.4%	27,563	98.7%	266	1.0%		
City of San Diego	PowerOn	602,053	1,690	0.3%	594,390	98.7%	5,972	1.0%	1	0.0%
County of San Diego	PowerOn	174,790	991	0.6%	173,013	99.0%	786	0.4%		
National City	PowerOn	19,039	37	0.2%	18,970	99.6%	32	0.2%		
<b>Total</b>		<b>955,094</b>	<b>3,233</b>	<b>0.3%</b>	<b>917,615</b>	<b>96.1%</b>	<b>34,245</b>	<b>3.6%</b>	<b>1</b>	<b>0.0%</b>

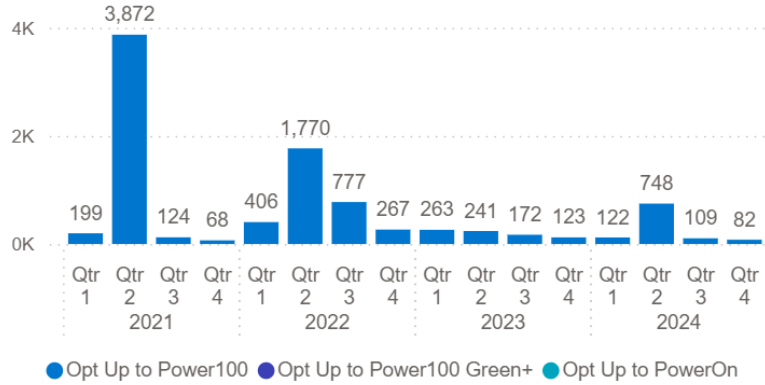


## Opt Up History

**Total Opt Ups**  
9,343

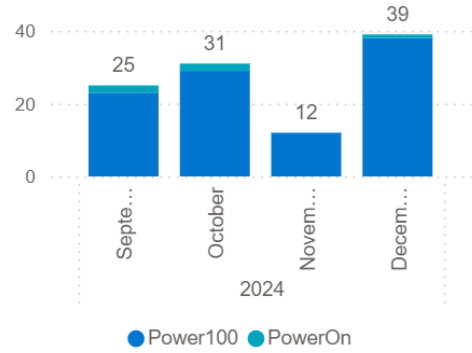
**Opt Ups Current\***  
8,106

### Opt Ups Quarterly



### Opt Ups Monthly

Last 4 Months



### Opt Ups by Jurisdiction

Jurisdiction	2021	2022	2023	2024	Total
City of Chula Vista	710	175	61	49	995
City of Encinitas	18	1	1	3	23
City of Imperial Beach	60	29	11	6	106
City of La Mesa	155	120	19	12	306
City of National City			12	24	36
City of San Diego	3,316	2,895	488	340	7,039
County of San Diego	4		207	627	838
<b>Total</b>	<b>4,263</b>	<b>3,220</b>	<b>799</b>	<b>1,061</b>	<b>9,343</b>

### Opt Ups by Customer Class

Customer Class	2021	2022	2023	2024	Total
Commercial	4,256	296	232	701	5,485
Residential	7	2,924	567	360	3,858
<b>Total</b>	<b>4,263</b>	<b>3,220</b>	<b>799</b>	<b>1,061</b>	<b>9,343</b>

### Opt Ups by Method

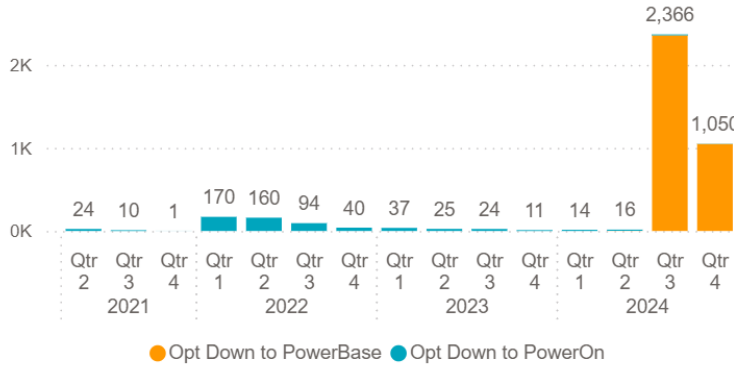
Opt Method	2021	2022	2023	2024	Total
CSR	4,232	1,372	301	817	6,722
IVR	4	85	84	42	215
Web	27	1,763	414	202	2,406
<b>Total</b>	<b>4,263</b>	<b>3,220</b>	<b>799</b>	<b>1,061</b>	<b>9,343</b>

\*Current indicates the account is open with SDG&E and this opt action is their latest opt action

## Opt Down History

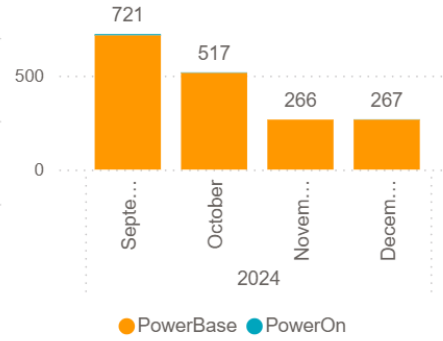
Total Opt Downs	Opt Downs Current*
4,042	3,684

### Opt Downs Quarterly



### Opt Downs Monthly

Last 4 Months



### Opt Downs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	Total
City of Chula Vista		2	4	286	292
City of Encinitas	35	429	74	150	688
City of Imperial Beach		1		31	32
City of La Mesa		4		105	109
City of National City				36	36
City of San Diego		28	13	1,788	1,829
County of San Diego			6	1,050	1,056
<b>Total</b>	<b>35</b>	<b>464</b>	<b>97</b>	<b>3,446</b>	<b>4,042</b>

### Opt Downs by Customer Class

Customer Class	2021	2022	2023	2024	Total
Commercial	34	23	9	508	574
Residential	1	441	88	2,938	3,468
<b>Total</b>	<b>35</b>	<b>464</b>	<b>97</b>	<b>3,446</b>	<b>4,042</b>

### Opt Downs by Method

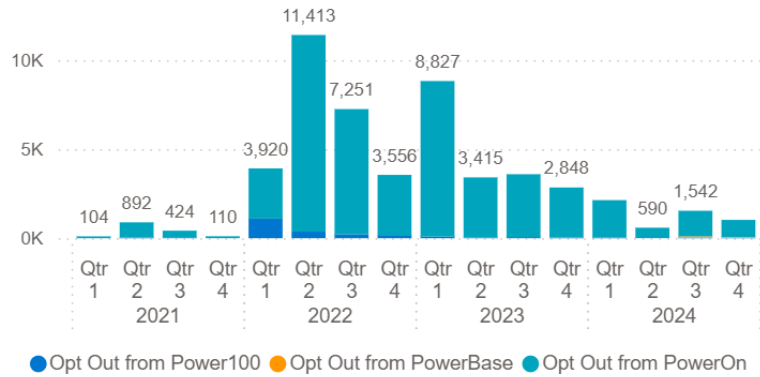
Opt Method	2021	2022	2023	2024	Total
CSR	31	311	65	2,559	2,966
IVR	4	26	3	307	340
Web		127	29	580	736
<b>Total</b>	<b>35</b>	<b>464</b>	<b>97</b>	<b>3,446</b>	<b>4,042</b>

\*Current indicates the account is open with SDG&E and this opt action is their latest opt action

## Opt Out History

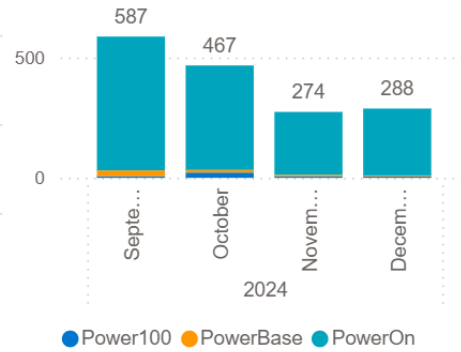
<b>Total Opt Outs</b>	<b>Opt Outs Current*</b>
51,652	45,217

### Opt Outs Quarterly



### Opt Outs Monthly

Last 4 Months



### Opt Outs by Jurisdiction

Jurisdiction	2021	2022	2023	2024	Total
City of Chula Vista	267	3,466	747	411	4,891
City of Encinitas	66	1,870	230	118	2,284
City of Imperial Beach	32	343	99	60	534
City of La Mesa	84	1,269	235	128	1,716
City of National City			285	74	359
City of San Diego	1,079	19,191	3,185	1,838	25,293
County of San Diego	2	1	13,902	2,670	16,575
<b>Total</b>	<b>1,530</b>	<b>26,140</b>	<b>18,683</b>	<b>5,299</b>	<b>51,652</b>

### Opt Outs by Customer Class

Customer Class	2021	2022	2023	2024	Total
Commercial	1,492	535	1,687	345	4,059
Residential	38	25,605	16,996	4,954	47,593
<b>Total</b>	<b>1,530</b>	<b>26,140</b>	<b>18,683</b>	<b>5,299</b>	<b>51,652</b>

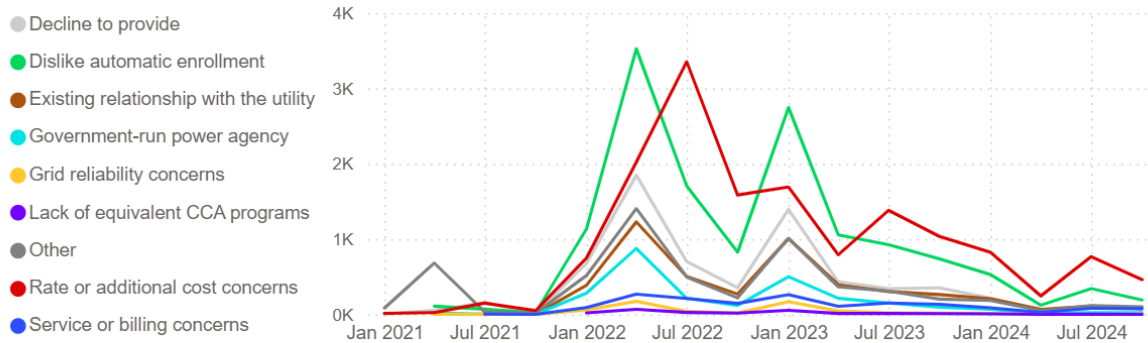
### Opt Outs by Method

Opt Method	2021	2022	2023	2024	Total
CSR	1,104	6,965	4,706	1,655	14,430
IVR	102	4,886	3,789	1,285	10,062
Web	324	14,289	10,188	2,359	27,160
<b>Total</b>	<b>1,530</b>	<b>26,140</b>	<b>18,683</b>	<b>5,299</b>	<b>51,652</b>

\*Current indicates the account is open with SDG&E and this opt action is their latest opt action

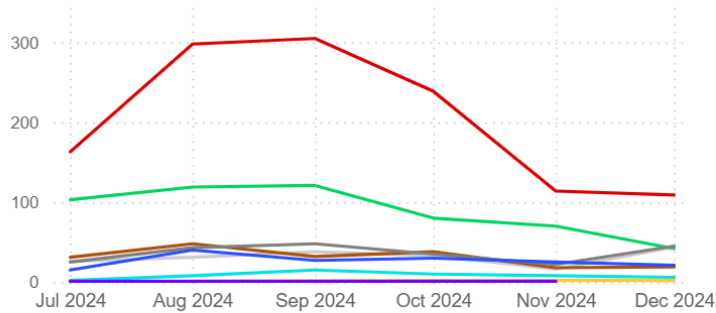
## Opt Out Reason Summary

Opt Outs by Reason Quarterly



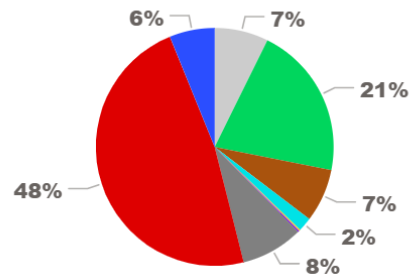
Opt Outs by Reason Monthly

Last 6 Calendar Months



Opt Out Reason Distribution

Last 6 Calendar Months

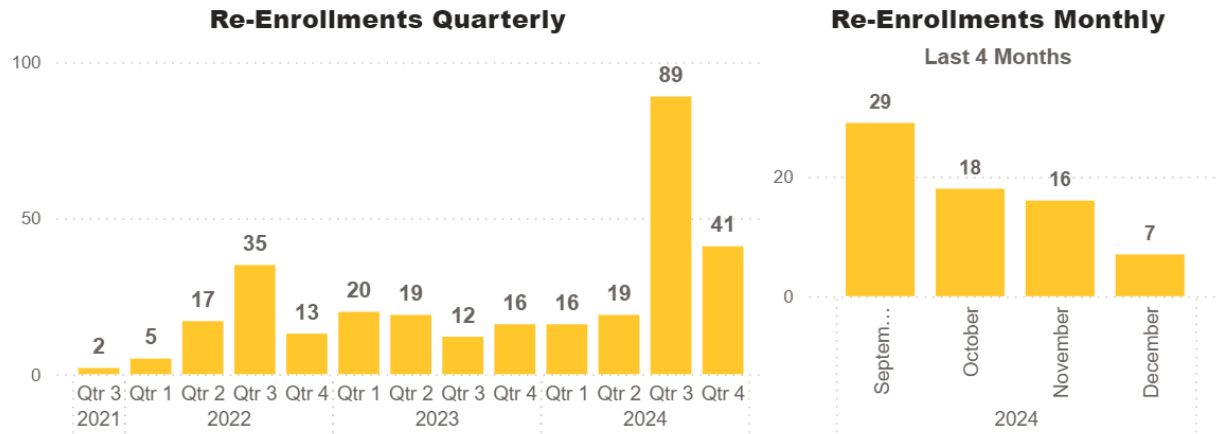


Opt Outs by Reason Table

Opt Out Reason	2021	2022	2023	2024	Total
Decline to provide	228	3,583	2,519	464	6,794
Dislike automatic enrollment	204	7,189	5,458	1,187	14,038
Existing relationship with the utility	2	2,389	1,968	462	4,821
Government-run power agency	24	1,491	961	129	2,605
Grid reliability concerns	7	293	252	20	572
Lack of equivalent CCA programs		131	90	12	233
Other	819	2,636	1,884	454	5,793
Rate or additional cost concerns	240	7,710	4,897	2,298	15,145
Service or billing concerns	6	718	654	273	1,651
<b>Total</b>	<b>1,530</b>	<b>26,140</b>	<b>18,683</b>	<b>5,299</b>	<b>51,652</b>

## Re-Enrollment Requests

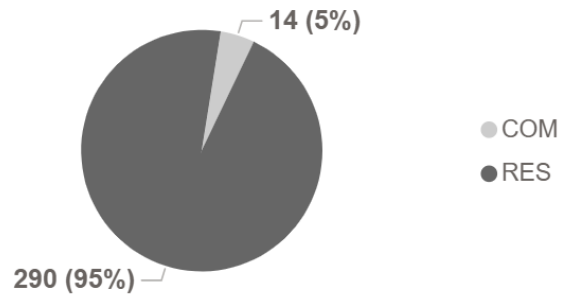
Excludes closed accounts



### Re-Enrollments by Jurisdiction

Jurisdiction	Accounts
City of Chula Vista	21
City of Encinitas	25
City of Imperial Beach	3
City of La Mesa	6
City of National City	1
City of San Diego	187
County of San Diego	61
<b>Total</b>	<b>304</b>

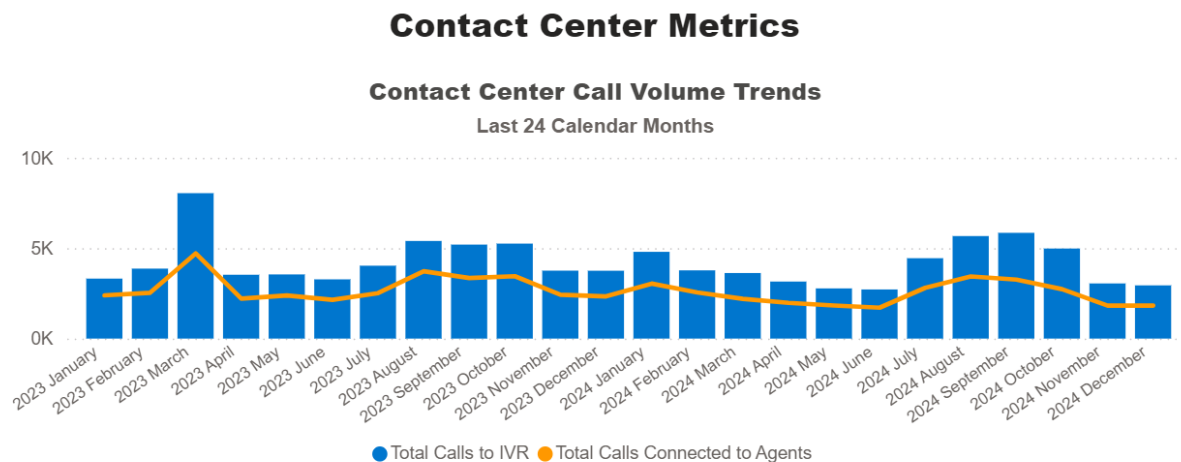
### Re-Enrollments Residential vs Commercial



D) Contact Center Metrics

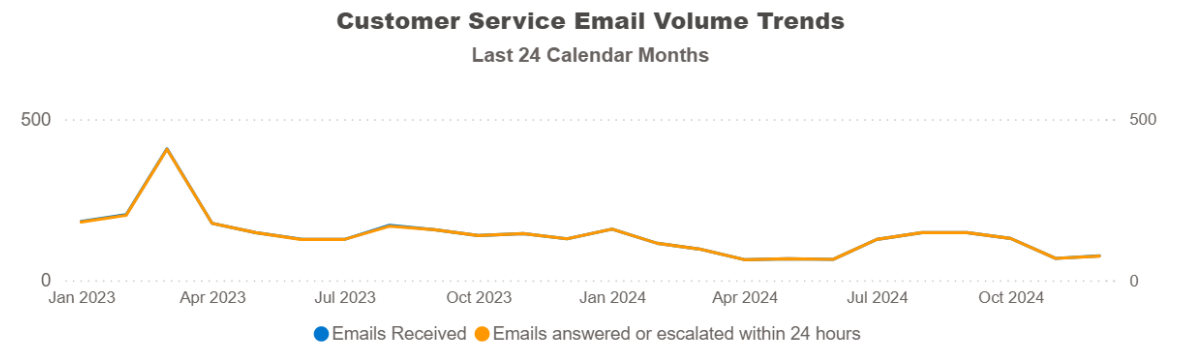
As anticipated, call volumes have decreased and stabilized as a result of the crossover from higher Summer rates to lower Winter rates effective as of November 1, 2024.

The chart below summarizes contact made by customers into the Contact Center broken down by month through December 30, 2024:



**Interactive Voice Response (IVR) and Service Level Agreement (SLA) Metrics**

	2021	2022	2023	2024	Total
Total Calls to IVR	2,289	47,118	52,977	47,781	150,165
Total Calls Connected to Agents	1,401	30,174	34,173	29,202	94,950
Avg Seconds to Answer	20.00	11.50	6.75	18.08	13.69
Avg Call Duration (Minutes)	8.5	9.8	9.6	9.6	9.4
Calls Answered within 60 Seconds (75% SLA)	96.23%	95.50%	97.57%	91.73%	95.19%
Abandon Rate	0.57%	0.36%	0.19%	0.72%	0.45%



**Customer Service Emails**

	2021	2022	2023	2024	Total
Emails Received	272	2,894	2,116	1,264	6,546
Emails answered or escalated within 24 hours	257	2,821	2,107	1,263	6,448
Completion %	94%	96%	100%	100%	98%

San Diego Community Power anticipates the trend of customers calling into the Contact Center's Interactive Voice Response (IVR) system tree and being able to self-serve their opt actions using the recorded prompts as well as utilizing Community Power's website for processing opt actions will continue to account for over 65% of all instances. The remaining portion of customer calls are connected to Customer Service Representatives to answer additional questions, assist with account support, or process opt actions.

As of this latest reporting month, Community Power has 9 Dedicated Customer Service Representatives staffed at the Contact Center and 1 Supervisor. Robust Quality Assurance (QA) procedures are firmly in place to ensure that customers are getting a world-class customer experience when they contact Community Power.

**AD-HOC COMMITTEE AND/OR SUBCOMITTEE REVIEW:**

N/A

**FISCAL IMPACT:**

N/A

**ATTACHMENTS:**

N/A





**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 6**

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**TO: Board of Directors**

**FROM: Chandra Pugh, Director of People**

**VIA: Karin Burns, Chief Executive Officer**

**SUBJECT: Update of Human Resources**

**DATE: January 23, 2025**

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**RECOMMENDATION:**

Receive and file update on Human Resources.

**BACKGROUND:**

The Human Resources department is preparing to launch our annual performance evaluation cycle for the calendar year 2024. This review period will be an opportunity for employees to share their accomplishments as aligned with overall strategic goals and also receive pertinent assessments of their overall performance. During this time, employees will complete a self-evaluation and provide feedback in an upward review of their direct supervisors. They will also of course also be reviewed by their direct managers. We are committed to open and constructive communication throughout the year as well as during this critical period and look forward to providing our teams with a seamless and efficient process.

We are pleased to have two new colleagues join us this month. Our new Assistant General Counsel, Ruby Laity, and our new IT Analyst will be helping to support our growing legal and Data Analytics and IT departments.

Ruby has been a practicing attorney since 2006 and has spent the majority of her career at the South Coast Air Quality Management District. Ruby brings with her a wealth of public agency experience with a focus on contracts and HR. Ruby has a law degree from Loyola law school and an undergraduate degree from UCLA.

Amy graduated from San Diego State University with a Bachelor of Science degree, along with her CompTIA Security + and Google Cybersecurity Professional Certificate. Amy

received a business award for reducing customer complaints by 90% for over 200+ client accounts.

We are actively recruiting for the following roles:

Associate Director of IT and Data Analytics

Rates Analyst

Origination manager

Senior Program Associate

**ANALYSIS AND DISCUSSION:**

N/A

**FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

N/A

**ATTACHMENTS:**

N/A



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 7**

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**TO:** Board of Directors

**FROM:** Jen Lebron, Director of Public Affairs

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Update on Public Affairs

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Receive and file an update on marketing, public relations, and local government affairs activities for San Diego Community Power ("Community Power").

**BACKGROUND:**

Community Power has engaged in a variety of public relations, marketing, community outreach, and local government affairs activities to drive awareness, spark community engagement, and maintain high customer enrollment.

**ANALYSIS AND DISCUSSION:**

Community Power's Public Affairs Department has been participating in events across our member agencies as it aims to increase general awareness and answer questions in a friendly, helpful manner.

*Recent and Upcoming Public Engagement Events*

San Diego Regional Climate Collaborative Leader Awards  
Cleantech San Diego Summit  
San Diego Promise Zone All-Partner Meeting  
December Nights  
Youth4Climate  
Cardiff Farmer's Market  
NAIOP Year End Economist Forecast  
Chula Vista Community Collaborative Monthly Meeting  
Mira Mesa Farmer's Market  
Urban Land Institute  
North San Diego Chamber of Commerce Regional Connect  
National City Chamber of Commerce

Chula Vista Starlight Parade  
A Kimball Holiday  
San Diego Climate Equity Working Group  
Imperial Beach Collaborative  
Olivewood Gardens Open Gardens  
Downtown San Diego Partnership  
Mission Valley Library  
Jackie Robinson YMCA Human Dignity Award Breakfast  
National City STEAM Collaborative  
Imperial Beach Library  
Equity Impacts  
Sunset Sweep: Florida Canyon Cleanup  
National City Chamber of Commerce 115h Annual Gala

### *Marketing, Communications and Outreach*

The Public Affairs team has been working diligently behind the scenes to support programmatic efforts, including the new Solar Battery Savings program, which provides customers with rooftop solar and battery storage incentives. It is also ramping up efforts to promote upcoming programs including one that helps customers repair their roofs to be ready for solar installations, and another that will distribute grants to small businesses that would benefit from more efficient refrigerators. The Public Affairs team is working closely with internal and external stakeholders to encourage participation in these programs and leveraging relationships with community partners to amplify our marketing and outreach efforts.

Community Power has continued its efforts to connect with local leaders through meetings and at community events.

The Public Affairs team will continue to develop new strategies, processes and capacity over the next several months to conduct more community outreach, expand marketing and brand awareness efforts, and provide timely, accurate information across multiple channels.

### *Local Government Affairs*

Community Power continues to meet with and work with local governments and tribal nations throughout the greater San Diego region. With the election results called in Community Power's member agencies, the local government affairs team is reaching out to new elected officials to inform them about the benefits Community Power offers to their constituents.

### **FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

N/A

**ATTACHMENTS:**

N/A



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 8**

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**TO: Board of Directors**

**FROM: Xiomalys Crespo, Sr. Community Engagement Manager**

**VIA: Karin Burns, Chief Executive Officer**

**SUBJECT: Community Advisory Committee Monthly Report**

**DATE: January 23, 2025**

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**RECOMMENDATION:**

Receive and file the Community Advisory Committee (CAC) monthly report.

**BACKGROUND:**

Per Section 5.10.3 of the San Diego Community Power (Community Power) Joint Powers Authority Agreement:

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

At the direction of the Board Chair, the CAC provides quarterly presentations to the Board of Directors in the regular agenda, and monthly reports in the consent agenda. The next quarterly update is expected to take place during the Board's February 20, 2025 regular meeting.

**ANALYSIS AND DISCUSSION:**

During the January 16, 2025 regular CAC meeting:

- Acting Chair Harris (La Mesa) led the unanimous approval of the consent agenda, which included updates on Customer Operations, Marketing, Public Relations and Local Government Affairs, and Programs. The CAC heard its quarterly presentation on Regulatory and Legislative Affairs, in which members had questions around the Provider of Last Resort and requested that staff provide more information regarding disconnections.
- Other presentations that members received included: 2025 Projected Rate Changes, in which members learned about updated timelines associated with the rate-setting process; an Update on Strategic Partnerships, in which members

asked questions around relationship-building with chambers of commerce and local sports franchises; and an Update on Solar Battery Savings, in which members commended staff for the program's innovation and recommended tracking performance incentive benefits on a monthly basis.

- The CAC also voted to recommend Board approval of its draft 2025 CAC Work Plan. The CAC leveraged its 2025 CAC Work Plan Ad-Hoc Committee to provide revisions, and that body provided its end of ad-hoc committee report to share feedback and outcomes.
- Committee members shared updates on community meetings and events. No Board of Directors items were recommended.

As of January 17, 2025, the CAC has three vacancies representing the County of San Diego (unincorporated), the City of Chula Vista, and the City of La Mesa. A recommendation to appoint a member representing the County of San Diego (unincorporated) will be heard at the January 23, 2025 regularly scheduled Board meeting. Members of the public must be residents, community leaders, and/or business owners of the respective jurisdictions and may submit their applications electronically. The vacancies continue to be advertised at meetings, community events, and through Community Power's social media.

**FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

N/A

**ATTACHMENTS:**

N/A



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 9**

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**TO: Board of Directors**

**FROM: Xiomalys Crespo, Sr. Community Engagement Manager**

**VIA: Karin Burns, Chief Executive Officer**

**SUBJECT: Approval of the 2025 Community Advisory Committee Work Plan**

**DATE: January 23, 2025**

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**RECOMMENDATION:**

Approve the 2025 Community Advisory Committee (CAC) Work Plan.

**BACKGROUND:**

Per Section 5.10.3 of the San Diego Community Power (SDCP) Joint Powers Authority (JPA) Agreement:

The Board shall establish a Community Advisory Committee comprised of non-Board members. The primary purpose of the Community Advisory Committee shall be to advise the Board of Directors and provide a venue for ongoing citizen support and engagement in the strategic direction, goals, and programs of the Authority.

Per the Board-approved CAC Policies and Procedures: “The CAC will adopt a Work Plan that aligns with the CAC Scope of Work approved by the Board of Directors. This shall be updated annually. The Work Plan shall be approved by the Board.”

To discuss and recommend revisions to the CAC Work Plan for the 2025 calendar year, the CAC established a 2025 CAC Work Plan Ad-Hoc Committee during its December 5, 2024 regular meeting. CAC Chair Vasilakis (City of San Diego) appointed the following volunteers to serve on the ad-hoc committee: Member Jahns (Encinitas), Member Emerson (National City), and Member Harris (La Mesa). The ad-hoc committee met on December 20, 2024. The proposed draft for the 2025 CAC Work Plan reflects the feedback and outcomes of that meeting.

**ANALYSIS AND DISCUSSION:**

Proposed changes to the current Work Plan include: clarifying strategies under each focus to better track progress, outcomes, and equity; revising proposed educational presentations; further codifying compliance with required trainings and forms; deleting



redundant and/or outdated areas of focus; revising areas of focus area to ensure feasibility; and including strategic planning participation as part of the Work Plan's scope.

**FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

The Community Advisory Committee recommended Board approval of the proposed 2025 CAC Work Plan during its January 16, 2025, regular meeting.

**ATTACHMENTS:**

A: Proposed Changes part of the 2025 Community Advisory Committee (CAC) Work Plan  
B: Draft 2025 Community Advisory Committee (CAC) Work Plan

# ITEM 9

# ATTACHMENT A



Community Advisory Committee  
2025 4-Work Plan (DRAFT)

Focus	Description	Outcomes
Equity Overview	Prioritize justice, equity, diversity, and inclusion by working with the <u>SDCP Community Power</u> Board and Staff.	Ensure that the CAC provides input from an equity perspective on the tasks brought before them <u>and monitor the equitable distribution of programming and service levels.</u>  <del>by revising CAC key documents and SDCP policies and procedures brought before the CAC to ensure they promote equity.</del>
<u>Training and CAC Educational Presentations</u>	CAC members may <u>receive training and</u> invite and hold educational presentations <u>to the wider CAC</u> <del>to the wider CAC</del> to assist <u>members in providing</u> <del>in</del> ongoing support to <u>SDCP Community Power</u> staff and <u>the</u> <del>its</del> Board to achieve the mission, vision, core values, and goals of the agency.	<u>Ensure 100% member compliance with the following required trainings, regulations, and form submissions:</u> <ul style="list-style-type: none"> <li><u>California Public Records Act</u></li> <li><u>Ralph M. Brown Act</u></li> <li><u>Ethics Training</u></li> <li><u>Sexual Harassment Prevention Training</u></li> <li><u>Statement of Economic Interests</u></li> </ul> <p>Ensure CAC is knowledgeable of <u>SDCP Community Power</u> operations as well as external issues <del>which that</del> may <del>affect</del> <u>impact</u> the organization, which may include:</p> <ul style="list-style-type: none"> <li><u>SDCP Community Power Orientation Training</u></li> <li><u>Strategic Planning Process Overview and Participation</u></li> <li><del>Battery Storage: Why is it important?</del></li> <li><del>Distributed Energy Resources</del></li> <li><del>Advancements in Geothermal Energy</del></li> <li><u>California Community Choice Association</u></li> <li><u>Programs Overview and Programs-Specific Education</u></li> <li><u>Finance &amp; Rate Setting Process</u></li> <li><u>Legislative Session 101</u></li> <li><u>Conflict of Interest and Ethical Conduct Policy</u></li> </ul>

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Focus	Description	Outcomes
		<ul style="list-style-type: none"> <li>• <a href="#">Battery Storage Guidelines and Community Impact</a></li> <li>• <a href="#">Local Infill Development</a></li> <li>• <a href="#">Community Power Website Guidance</a></li> <li>• <a href="#">State Efforts on Geothermal Energy</a></li> </ul>
<b>Legislative / Public Policy / Regulatory</b>	<del>Bring forth news and a</del> Advise the Board of legislative, public policy and regulatory issues that are brought forward by <a href="#">SDCP Community Power</a> and/or identified by the <a href="#">SDCP Community Power</a> Board as a priority. Make public comments at public meetings supporting <a href="#">SDCP Community Power</a> positions on these issues.	<ul style="list-style-type: none"> <li>• Anticipate issues that may come up to <a href="#">SDCP Community Power</a> by utilizing the CAC's connections to the community;</li> <li>• Clarify strategies and information-sharing protocols to activate advocacy, with the CAC Secretary and <a href="#">SDCP Community Power</a> staff determining and sharing time-sensitive developments to organize support from CAC members and their networks;</li> <li>• Make possible public comments and/or letters of support on issues if provided with talking points by <a href="#">SDCP Community Power</a> staff; and</li> <li>• Receive <del>Legislative Session 101 Training and</del> Quarterly Presentations on Legislative and Regulatory Activity.</li> </ul>
<b>Energy Bid Proposal Evaluation Criteria</b>	Support and monitor the implementation of the revised Energy <del>Bid-Proposal</del> Evaluation Criteria.	Support staff in monitoring the Energy <del>Bid-Proposal</del> Evaluation Criteria and overall Power Procurement Efforts by receiving <del>quarterly annual</del> reports on its implementation, <del>and functioning.</del>
<b>Marketing and Communications Efforts</b>	Support strategic outreach efforts to the community, including events, marketing, communication, and other activities; <del>bring input from the community back to Community Power staff.</del>	Support <a href="#">SDCP Community Power</a> staff in the strategic marketing and communication of agency activities to dispel inaccurate information by: <ul style="list-style-type: none"> <li>• Receiving Community-Member Communications Guide <a href="#">&amp; Frequently Asked Questions &amp; Tool Kit Training</a>;</li> <li>• Volunteering at <del>SDCP</del> outreach events and workshops <a href="#">with Community Power</a>; and</li> <li>• Promoting <a href="#">SDCP Community Power</a> Programs</li> </ul>

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Focus	Description	Outcomes
<b>Community Power Plan Implementation</b>	Assist staff in the implementation of the Community Power Plan, which informs what Community Power's long-term programmatic and local procurement outlook will be.	<p>Ensure community input continues to be key in the development and implementation of <u>GPP-Community Power Plan</u> programs by:</p> <ul style="list-style-type: none"> <li>• <u>Approving the creation of a Programs-specific body of the CAC;</u></li> <li>• Receive <u>regular quarterly</u> updates and/or staff reports on pilot projects/<u>GPP Community Power Plan</u> implementation at large, <u>providing full presentations whenever appropriate or requested by the CAC;</u> and</li> <li>• Supporting <u>workshops informational opportunities</u> with <u>member agencies stakeholders</u> to increase <u>community</u> engagement on <u>GPP</u> programmatic adoption including: <ul style="list-style-type: none"> <li>○ <u>Solar for Our Communities</u><u>Solar Advantage</u></li> <li>○ <u>San Diego</u> Regional Energy Network</li> <li>○ Solar <u>Battery Savings</u><u>and Battery Storage Incentives</u></li> </ul> </li> </ul>
<b>Civic Engagement &amp; Participation</b>	Explore and develop ways to increase participation at CAC meetings, leverage CAC members' networks <u>to augment Community Power programming and outreach,</u> and create an <u>SDCP-CAC member-and volunteer</u> recruitment pipeline.	<p>Increase interest and awareness of <u>SDCP-Community Power</u> programming <u>and;</u> community involvement in the organization's mission, vision, and goals <u>by;</u> <u>CAC turnover resiliency by:</u></p> <ul style="list-style-type: none"> <li>• <u>Attending and actively participating in community events with San Diego Community Power</u></li> <li>• <u>Collaborating with Community Power staff</u><u>Assisting</u> in the development of <u>social media</u> content <u>for wider media distribution</u> explaining <u>Community Power priorities and</u> the importance of the CAC;</li> <li>• <u>Facilitating a CAC Member Network and Affiliations Workshop;</u> <u>Assisting staff in member recruitment efforts to support the filling of current and future vacancies;</u></li> <li>• Connecting <u>SDCP-Community Power</u> staff to volunteering and fellowship programs to expand outreach capacity; and</li> <li>• <u>Introducing members of the community to SDCP publicly noticed meetings and staff and member agency programming/elected staff.</u></li> </ul>

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The CAC shall cover these tasks year-round, and other tasks not mentioned above with prior approval of SDCP-Community Power staff but within the purview of the Scope of Work. All tasks shall be presented and acted upon in a manner that complies with the Ralph M. Brown Act.

# ITEM 9

## ATTACHMENT B



**Community Advisory Committee  
2025 Work Plan (DRAFT)**

Focus	Description	Outcomes
<b>Equity Overview</b>	Prioritize justice, equity, diversity, and inclusion by working with the Community Power Board and Staff.	Ensure that the CAC provides input from an equity perspective on the tasks brought before them and monitor the equitable distribution of programming and service levels.
<b>Training and Educational Presentations</b>	CAC members may receive training and invite and hold educational presentations to the wider CAC to assist members in providing ongoing support to Community Power staff and its Board to achieve the mission, vision, core values, and goals of the agency.	<p>Ensure 100%-member compliance with the following required trainings, regulations, and form submissions:</p> <ul style="list-style-type: none"> <li>• California Public Records Act</li> <li>• Ralph M. Brown Act</li> <li>• Ethics Training</li> <li>• Sexual Harassment Prevention Training</li> <li>• Statement of Economic Interests</li> </ul> <p>Ensure CAC is knowledgeable of Community Power operations as well as external issues that may impact the organization, which may include:</p> <ul style="list-style-type: none"> <li>• Community Power Orientation</li> <li>• Strategic Planning Process Overview &amp; Participation</li> <li>• California Community Choice Association</li> <li>• Programs Overview and Programs-Specific Education</li> <li>• Finance &amp; Rate Setting Process</li> <li>• Legislative Session 101</li> <li>• Conflict of Interest and Ethical Conduct Policy</li> <li>• Battery Storage Guidelines and Community Impact</li> <li>• Local Infill Development</li> <li>• Community Power Website Guidance</li> <li>• State Efforts on Geothermal Energy</li> </ul>

Focus	Description	Outcomes
<b>Legislative / Public Policy / Regulatory</b>	Advise the Board of legislative, public policy and regulatory issues that are brought forward by Community Power and/or identified by the Community Power Board as a priority. Make public comments at public meetings supporting Community Power positions on these issues.	<ul style="list-style-type: none"> <li>• Anticipate issues that may come up to Community Power by utilizing the CAC's connections to the community;</li> <li>• Clarify strategies and information-sharing protocols to activate advocacy, with the CAC Secretary and Community Power staff determining and sharing time-sensitive developments to organize support from CAC members and their networks;</li> <li>• Make possible public comments and/or letters of support on issues if provided with talking points by Community Power staff; and</li> <li>• Receive Quarterly Presentations on Legislative and Regulatory Activity.</li> </ul>
<b>Energy Proposal Evaluation Criteria</b>	Support and monitor the implementation of the revised Energy Proposal Evaluation Criteria.	Support staff in monitoring the Energy Proposal Evaluation Criteria and overall Power Procurement Efforts by receiving annual reports on its implementation.
<b>Marketing and Communications Efforts</b>	Support strategic outreach efforts to the community, including events, marketing, communication, and other activities; bring input from the community back to Community Power staff.	<p>Support Community Power staff in the strategic marketing and communication of agency activities to dispel inaccurate information by:</p> <ul style="list-style-type: none"> <li>• Receiving Community-Member Communications Guide &amp; Frequently Asked Questions;</li> <li>• Volunteering at outreach events and workshops with Community Power; and</li> <li>• Promoting Community Power Programs</li> </ul>
<b>Community Power Plan Implementation</b>	Assist staff in the implementation of the Community Power Plan, which informs what Community Power's long-term programmatic and local procurement outlook will be.	<p>Ensure community input continues to be key in the development and implementation of Community Power Plan programs by:</p> <ul style="list-style-type: none"> <li>• Receive regular updates and/or staff reports on pilot projects/Community Power Plan implementation at large, providing full presentations whenever appropriate or requested by the CAC; and</li> <li>• Supporting informational opportunities with stakeholders to increase engagement on programmatic adoption including Solar Advantage, San Diego Regional Energy Network, and Solar Battery Savings.</li> </ul>



Focus	Description	Outcomes
<b>Civic Engagement &amp; Participation</b>	Explore and develop ways to increase participation at CAC meetings, leverage CAC members' networks to augment Community Power programming and outreach and create a CAC member recruitment pipeline.	<p>Increase interest and awareness of Community Power programming and community involvement in the organization's mission, vision, and goals by</p> <ul style="list-style-type: none"> <li>• Attending and actively participating in community events with San Diego Community Power</li> <li>• Collaborating with Community Power staffing the development of content for wider media distribution explaining Community Power priorities and the importance of the CAC;</li> <li>• Assisting staff in member recruitment efforts to support the filling of current and future vacancies;</li> <li>• Connecting Community Power staff to volunteering and fellowship programs to expand outreach capacity; and</li> </ul>

*The CAC shall cover these tasks year-round, and other tasks not mentioned above with prior approval of Community Power staff but within the purview of the Scope of Work. All tasks shall be presented and acted upon in a manner that complies with the Ralph M. Brown Act.*



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 10**

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**TO:** Board of Directors  
**FROM:** Veera Tyagi, General Counsel  
**SUBJECT:** Election of Chair and Vice Chair for Calendar Year 2025  
**DATE:** January 23, 2025

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**RECOMMENDATION:**

Elect a Chair and Vice Chair for Calendar Year 2025.

**BACKGROUND:**

Section 5.2 of Community Power's Joint Powers Agreement (JPA) and Article IV of Community Power's Bylaws provide that the Board of Directors will annually elect a Chair and Vice Chair from among its members. The election is required to be conducted at the first meeting of the calendar year.

Under the JPA, the elected Chair and Vice Chair will serve for one year or until a successor is elected. There is no limit on the number of terms the Chair or Vice Chair may serve.

**FISCAL IMPACT:**

None

**ATTACHMENTS:**

None



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 11**

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**TO:** Board of Directors

**FROM:** Eric W. Washington, Chief Financial Officer

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Appointment of a New Member to the Finance and Risk Management Committee

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Staff recommends that the Board of Directors consider the appointment of a new member to the Finance and Risk Management Committee to fill the vacancy left by Director McCann from the City of Chula Vista.

**BACKGROUND:**

The Finance and Risk Management Committee (FRMC) is a standing committee of San Diego Community Power's (Community Power) Board of Directors (Board), whose purpose, as stated in section 5.10.2 of Community Power's Joint Power Agreement, is to provide input and oversight on matters related to the agency's funding plan, its fiscal year budgets, financial policies and procedures, risk management policies and procedures, and other responsibilities as may be directed by the Board.

Under Article VIII, section 2 of Community Power's Bylaws, the Board Chair (Chair) nominates members to standing committees, subject to approval by majority vote by the Board. If the Board fails to approve the Chair's nominations to a Standing Committee, the Board may entertain a motion for the appointment of the committee members. The Bylaws also expressly provide that Alternate Directors may serve on and chair committees.

On January 30, 2020, the Board established the FRMC. On February 22, 2024, Director McCann was appointed as Chair and Directors Aguirre and Yamane were appointed as committee members.

**ANALYSIS AND DISCUSSION:**

There is no term of office for a committee member, so current members can continue to serve in their capacity unless they step down voluntarily or are changed by a vote of the Board. The JPA requires that the FRMC consist of a subset of primary or alternate

directors. As a result, the Board may elect to fill the vacancy from the departure of Director McCann from the Board. If any changes are to be made to the Committee at this time, Article VIII of the Community Power Bylaws calls for the Chair to nominate the committee member(s) subject to approval by a majority vote of the Board.

**COMMITTEE REVIEW:**

N/A

**FISCAL IMPACT:**

N/A

**ATTACHMENTS:**

N/A



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 12**

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**TO:** Board of Directors

**FROM:** Sheena Tran, Associate Director of Programs  
Colin Santulli, Director of Programs

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Adopt Resolution No. 2025-01 Approving the San Diego Regional Energy Network (SDREN) Energy Efficiency Programs and Budget Agreement with San Diego Gas and Electric (SDG&E) for Years 2024-2027 and Authorize the Chief Executive Officer to Accept, Appropriate and Expend the SDREN Funds in an Amount Not-to-Exceed \$124,274,206 in the FY 2024-25 Capital Budget and FY 2025-29 Capital Investment Plan, and Related Actions

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Adopt Resolution No. 2025-01 (Attachment A) approving and authorizing the Chief Executive Officer to: (1) execute the San Diego Regional Energy Network (SDREN) Energy Efficiency Programs and Budget Agreement with SDG&E and to negotiate and execute any amendments, extensions, or renewals of such agreement (Attachment B); and (2) accept, appropriate, and expend the SDREN funds in an amount not to exceed \$124,274,206 in the FY 2024-25 Capital Budget and FY 2025-29 Capital Investment Plan; and (3) take all necessary action to administer, monitor, manage, and ensure compliance with the agreement and to negotiate and execute contracts with third parties to implement the agreement or use of funds.

**BACKGROUND:**

On January 5, 2024, San Diego Community Power (Community Power), in partnership with the County of San Diego, submitted the SDREN Business Plan Application to the California Public Utilities Commission (CPUC). On August 1, 2024, the CPUC approved SDREN, providing funding for the various program offerings included in SDREN's Business Plan Application. The approval of a Regional Energy Network in San Diego allows access to funds to administer and implement energy efficiency programs focused on underserved and hard-to-reach residents, businesses, and public agencies in the region.

Since SDREN's approval, Staff have been working on completing CPUC requirements as directed in Decision 24-08-003 (Decision Addressing Motion for Authorization of San Diego Regional Energy Network). The Decision documents the following:

- (i) Approves the proposal for a San Diego Regional Energy Network and authorized SDREN as a new energy efficiency Portfolio Administrator,
- (ii) Approves SDREN's proposed energy efficiency portfolio strategic plan, portfolio plan, and budget by authorizing energy efficiency funding in the aggregate amount of \$124,274,206 for the years 2024 through 2027,
- (iii) Appoints SDG&E to serve as the fiscal agent utility for SDREN, and
- (iv) Instructs SDG&E to coordinate administratively with SDREN with respect to the collection and distribution of electric funds supporting SDREN's activities.

## **ANALYSIS AND DISCUSSION:**

Community Power is the SDREN Lead Portfolio Administrator, which entails having the primary responsibility for fiscal management, purchasing and contracting activities, and being the primary regulatory contact for SDREN. SDG&E's role as the investor-owned utility (IOU) fiscal agent is to conduct required revenue collection and disbursement of funds to the SDREN Lead Portfolio Administrator as authorized and directed by the CPUC. The SDREN Energy Efficiency Programs and Budget Agreement for Years 2024-2027 documents how Community Power and SDG&E will coordinate administratively with SDREN with respect to the collection and distribution of funds supporting SDREN's activities.

Pending Board approval, Staff will execute the SDREN Energy Efficiency Programs and Budget Agreement for Years 2024-2027 to receive CPUC authorized funds from SDG&E to implement SDREN's programs.

Pursuant to Section 3.2.9 of the Joint Powers Agreement (JPA), Community Power has the power, at the discretion of the Board, to apply for, accept, and receive all licenses, permits, grants, loans, or other aid from any federal, state, or local public agency. Pursuant to Section 4.6.16, the Board is responsible for exercising the Specific Powers identified in Section 3.2, except those which the Board may elect to delegate to the Chief Executive Officer. The Chief Executive Officer is not authorized under the JPA or the Board's Budget Policy to accept, appropriate, and expend grant funds without Board approval.

The Board is authorized to do the following, and may delegate such authority to the Chief Executive Officer:

- Execute the agreement, and negotiate and execute any amendments, extensions, or renewals of the grant agreement;
- Accept, appropriate, and expend the SDREN funds;

- Take all necessary actions to administer, monitor, manage, and ensure compliance with the agreement; and
- Negotiate and execute contracts with third parties to implement the agreement or use of the funds.

**FISCAL IMPACT:**

All SDREN activities are cost recoverable. Community Power staff time contributing to SDREN management is reimbursable by SDG&E.

**COMMITTEE REVIEW:**

N/A

**ATTACHMENTS:**

- A: Resolution Number 2025-01 A Resolution of the Board of Directors of San Diego Community Power Authorizing Execution of the SDREN Energy Efficiency Programs and Budget Agreement with San Diego Gas and Electric Company (SDG&E); Accepting, Appropriating, and Expending Funds; and Related Actions.
- B: San Diego Regional Energy Network Energy Efficiency Programs and Budget Agreement for Years 2024-2027

# ITEM 12

## ATTACHMENT A



**SAN DIEGO REGIONAL ENERGY NETWORK  
ENERGY EFFICIENCY  
PROGRAMS AND BUDGET AGREEMENT  
FOR YEARS 2024-2027**

This San Diego Regional Energy Network – Energy Efficiency Programs and Budget Agreement for Years 2024-2027 (“**Programs Agreement**”) is made and entered into this 31st day of January 2025, by and between **San Diego Community Power**, a California joint powers agency (“**SDCP**”) and **San Diego Gas and Electric Company** (“**SDG&E**”), a California investor-owned utility. SDCP and SDG&E are sometimes individually referred to as “**Party**” and collectively as “**Parties**.”

**RECITALS**

A. On January 5, 2024, SDCP filed a Motion with the California Public Utilities Commission (“CPUC” or “Commission”) for approval of its Energy Efficiency Portfolio Application and the formation of a new Regional Energy Network (“REN”) (as originally introduced by the Commission in its decision, Decision Providing Guidance on 2013-2014 Energy Efficiency Portfolios and 2012 Marketing, Education and Outreach (D.12-05-015)) to be known as the San Diego Regional Energy Network (“SDREN”), and to approve the SDREN's proposed energy efficiency portfolio strategic plan, portfolio plan, and budget (the “Plan and Budget”) concerning the proposed program areas and certain administrative costs associated therewith incorporated into such motion. On August 7, 2024, the Commission issued its decision, Decision (“D.”) Addressing Motion for Authorization of San Diego Regional Energy Network (D.24-08-003) (the “2024 Decision”), pursuant to which, among other things, the Commission (i) approved the SDREN as a REN and as a full energy efficiency portfolio administrator, (ii) approved the Plan & Budget by authorizing energy efficiency funding in the aggregate amount of One Hundred Twenty-Four Million Two Hundred Seventy-Four Thousand Two Hundred and Six Dollars and Zero Cents (\$124,274,206.00) for the years 2024 through 2027, (iii) appointed SDG&E to serve as the fiscal agent utility for SDREN, and (iv) instructed SDG&E to coordinate administratively with SDREN with respect to the collection and distribution of electric funds supporting SDREN's activities.

B. The Motion filed on January 5, 2024 was made in accordance with various decisions of the Commission, including Decision Re Energy Efficiency Goals for 2016 and Beyond and Energy Efficiency Rolling Portfolio Mechanics (D.15-10-028), Decision Providing Guidance for Initial Energy Efficiency Rolling Portfolio Business Plan Filings (D.16-08-019), Decision Addressing Energy Efficiency Business Plans (D.18-05-041), Decision Regarding Frameworks for Energy Efficiency Regional Energy Networks and Market Transformation (D.19-12-021), Assessment Of Energy Efficiency Potential And Goals and Modification of Portfolio Approval and Oversight Process (D.21-05-031), Decision Authorizing Energy Efficiency Portfolios for 2024-2027 and Business Plans For 2024-2031 (D.23-06-055), and Decision Modifying Rural Regional Energy Network Approved in Decision 23-06-055 (D.24-09-031).

C. Pursuant to a Memorandum of Understanding (the "MOU") dated December 11, 2024, between SDCP and the County of San Diego, SDCP and the County of San Diego, by and through each of their respective agencies, have agreed, adopted and approved SDCP as the authorized SDREN Lead Portfolio Administrator, which entails having the primary responsibility for fiscal management, purchasing and contracting activities, and being the primary regulatory contact for SDREN on behalf of SDCP and the County of San Diego under this Programs Agreement (SDCP, acting in such capacity and performing such roles is referred to herein as the "SDREN Lead Portfolio Administrator").

D. On July 3, 2023, the Commission issued D.23-06-055 (Decision Authorizing Energy Efficiency Portfolio for 2024-2027 and Business Plans for 2024-2031) (the "2024-2027 Decision" and collectively, with the 2024 Decision, "the Decisions"). In the 2024-2027 Decision, the Commission directed that the Investor-Owned Utilities' (IOUs') role of fiscal auditing, compliance and oversight for RENs be removed and that the appropriate role for the IOUs is one of collecting and disbursing funds for RENs.

## **AGREEMENT**

In consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, SDCP and SDG&E, intending to be legally bound hereby, agree as follows:

### **ARTICLE I Documents**

Section 1.1 This base document, along with any amendments hereto, the Exhibits expressly listed below, as well as any documents expressly incorporated herein, collectively form, and are referred to throughout as, the "Programs Agreement." The Parties intend that this Programs Agreement shall be read and interpreted as a single and unified document. The Exhibits are as follows:

Exhibit A: Maximum Contract Sum and SDG&E Maximum Contribution

Exhibit B: SDG&E Privacy GreenLight Process

Exhibit C: CPUC Energy Efficiency Policy Manual Version 6, April 2020

Exhibit D: Joint Cooperation Memo (JCM)

Exhibit E: Description and Map of SDREN Service Territory

Section 1.2 This Programs Agreement constitutes the complete and exclusive statement of understanding among the Parties and supersedes any previous agreements, amendments, written or oral, and all communications among the Parties

relating to the subject matter herein. To the extent that there is any conflict of, or inconsistency in, interpretation between this Programs Agreement and the Decisions of the Commission, the Decisions of the Commission shall be given interpretive priority.

## **ARTICLE II**

### **Definitions**

The terms and phrases in this Article 2, in quotes and with initial letter(s) capitalized, shall have the meanings set forth below whenever used in this Programs Agreement.

Section 2.1 "Lead Portfolio Administrator" means SDCP serving in its capacity as the fiscal agent, purchasing and contracting manager and primary regulatory contact for SDREN.

Section 2.2 "Authorized Work" means any and all goods, services, materials and deliverables and related obligations to be performed and undertaken by SDCP, the County of San Diego or implementor of an SDREN Program, as approved by SDCP, in its capacity as the SDREN Lead Portfolio Administrator, in conformance this Programs Agreement and the Decisions or as otherwise authorized by the Commission.

Section 2.3 "Business Day" is the measurement period of time, for purposes of this Programs Agreement, from one midnight to the following midnight, excluding Saturdays, Sundays, and holidays.

Section 2.4 "Calendar Day" is the measurement period of time, for purposes of this Programs Agreement, from one midnight to the following midnight, including Saturdays, Sundays, and holidays. Unless otherwise specified, all days in this Programs Agreement are Calendar Days.

Section 2.5 "CEDARS" means the California Energy Data and Reporting System.

Section 2.6 "Commission" means the California Public Utilities Commission.

Section 2.7 "Customer" or "Customers" means, whether singular or plural, whether residential, commercial or otherwise, those persons or entities receiving electrical service and/or natural gas service from SDG&E located in San Diego County who pay the 'public goods charge' pursuant to Section 381 of the California Public Utilities Code, or the 'gas surcharge' pursuant to Sections 890-900 of the California Public Utilities Code, respectively, in each case, for public purposes programs, including energy efficiency programs approved by the Commission.

Section 2.8 "EM&V Activities" means those evaluation,

measurement and verification activities undertaken by SDREN, including data collection, Commission evaluation activities, as well as process, market and sector analysis for SDREN Program planning and implementation pursuant to the Decisions and other Commission requirements.

Section 2.9 "Incentive" has the meaning used in the CPUC Energy Efficiency Policy Manual, Version 6, April 2020, as may be supplemented or updated from time to time.

Section 2.10 "JCM" means those certain Joint Cooperation Memorandums to be jointly filed with the Commission annually by the Parties pursuant to the Decisions and as approved by the Commission during the term of this Program Agreements, as may be amended and updated from time to time.

Section 2.11 "Program Expenditures" means actual (i.e., no mark-up for profit, administrative or other indirect costs), reasonable expenditures by SDCP, the County of San Diego, or implementor of an SDREN Program in solely targeted and direct support of an SDREN Program or Commission-approved EM&V Activity.

Section 2.12 "Third-Party Contractor" (implementor) is a person or an entity participating in any of the SDREN Programs to furnish services or materials as part of or directly related to an SDREN Program.

Section 2.13 "Portfolio Administrator" (previously known as "Program Administrator") is the entity or entities that are funded through electric and gas public purpose program surcharges, and authorized by the CPUC, to administer market-rate energy efficiency programs.

Section 2.14 "Implementation Plan(s)" are documents developed by Portfolio Administrators and includes details of programs such as strategies, participant eligibility requirements and program rules.

Section 2.15 "Fiscal Agent" is a role assigned to IOUs for the RENs operating within its territories and is limited to collecting and disbursing funds under the direction of the Commission.

### **ARTICLE III**

#### **SDREN Lead Portfolio Administrator**

##### Section 3.1 Appointment of SDREN Lead Portfolio Administrator.

(a) SDCP and the County of San Diego have executed an MOU, dated December 11, 2024, by and through each of their respective agencies, approving SDCP as the authorized SDREN Lead Portfolio Administrator, which entails having the primary responsibility for fiscal management, purchasing and contracting activities, and being the

primary regulatory contact for SDREN on behalf of SDCP and the County of San Diego. Included in the rights as the SDREN Lead Portfolio Administrator are the full power and authority to act on SDCP and the County of San Diego's behalf with respect to SDREN and the SDREN Programs.

(b) Per the MOU, SDG&E shall be entitled to rely on any decision, action, consent or instruction of the SDREN Lead Portfolio Administrator as being the decision, action, consent or instruction of SDCP and the County of San Diego, and SDG&E is hereby relieved from any liability to any person for acts done by SDG&E in accordance with any such decision, act, consent or instruction.

(c) The SDREN Lead Portfolio Administrator shall have such powers and authority as are necessary to carry out the functions assigned to it under this Programs Agreement. Without limiting the generality of the foregoing, the SDREN Lead Portfolio Administrator shall have (i) full power, authority and discretion to receive and disburse the payments it receives from SDG&E pursuant to Section 6.1, whether to Third-Party Contractors, Subcontractors, the County of San Diego or otherwise; (ii) execute and deliver any amendment or waiver to this Programs Agreement; and (iii) take all other actions or refrain from taking such action by or on behalf of SDCP and the County of San Diego in connection with this Programs Agreement.

(d) SDCP agrees not to amend or modify the MOU without the written prior acknowledgement of SDG&E to the extent such amendment or modification would cause SDCP to be in breach of this Programs Agreement or otherwise adversely affect the obligations of SDCP, or the rights of SDG&E, hereunder.

## **ARTICLE IV**

### **Roles and Deliverables**

Section 4.1 SDG&E. With respect to any disbursements to be made by SDG&E to the SDREN Lead Portfolio Administrator pursuant to the Decisions concerning Commission approved and authorized SDREN annual budgets for the 2024 to 2027 funding cycle, SDG&E shall be responsible to collect its required revenue allocated as set forth in Exhibit A. SDG&E's role shall be limited to that of revenue collection and disbursement of funds to the SDREN Lead Portfolio Administrator as authorized by the Commission. SDG&E will be responsible for timely disbursement of funds to the SDREN Lead Portfolio Administrator in accordance with Section 6.1.

Section 4.2 SDREN Independent Authority. Pursuant to the 2024 Decision, SDCP, as the SDREN Lead Portfolio Administrator, on behalf of SDREN, has the independent authority to design, manage, deliver, and oversee the SDREN Programs, without SDG&E's direction as it relates to design and delivery of such SDREN Programs. SDCP, as the SDREN Lead Portfolio Administrator, on behalf of SDREN, shall be independently accountable to the Commission for delivering results in accordance with Commission decisions, directives, policies, or rules.

Section 4.3 Modification of the Program by the Commission. The Parties each acknowledge and agree that this Programs Agreement and any SDREN Program shall at all times be subject to the authority and discretion of the Commission, including, but not limited to, review, modifications and denials, as the Commission may direct from time to time in the exercise of its jurisdiction. If the Commission modifies an SDREN Program, the Parties shall amend this Programs Agreement as necessary to incorporate such changes. Such corresponding amendment shall specify any changes, including without limitation, increases or decreases in overall SDREN Program funding, or such other modification or change as directed by the Commission.

Section 4.4 Modification of the Program by the Parties. SDCP and SDG&E each acknowledge that SDG&E's function does not extend to the SDREN Program design or modification, or fiscal management, auditing, compliance, budgetary monitoring or fiscal oversight, or the effectiveness of SDCP's delivery of Authorized Work under this Programs Agreement. Without limiting the generality of the foregoing, SDG&E and SDCP may collaborate on and agree to SDREN Program designs, implementation strategies or modifications. SDG&E's role is that of conducting required revenue collection and disbursement for SDREN as authorized by the Commission. SDCP on behalf of SDREN shall be independently accountable to the Commission for all fiscal and budgetary compliance and delivering the results for the authorized SDREN Programs.

## **ARTICLE V**

### **Maximum Contract Sum**

Section 5.1 The Maximum Contract Sum committed to this Programs Agreement from SDG&E is set forth in Exhibit A of this Programs Agreement. Exhibit A reflects SDREN's Commission authorized Plan & Budget from the Decisions for each SDREN Program calendar year from 2024 through 2027. Exhibit A shall automatically be amended and updated to reflect the latest Commission-approved SDREN budget or budget changes and SDG&E's maximum funding contribution for each SDREN Program calendar year without a need for formal amendment, which amended Exhibit A shall be automatically incorporated into this Programs Agreement by this reference. Notwithstanding the foregoing, promptly following knowledge thereof, SDCP shall provide SDG&E (1) notice of any request to the Commission to update, change, or extend its current authorized SDREN budget that impacts SDG&E's revenue collection on behalf of SDREN and the maximum funding contribution of SDG&E; and (2) notice of any Commission-approved changes to the SDREN budget to be incorporated into Exhibit A.

Section 5.2 Except as otherwise set forth in an Implementation Plan, and future Commission written decisions, and unless the fund-shifting rules established by the Commission are changed, SDCP, as the SDREN Lead Portfolio Administrator, has the sole discretion to re-allocate the SDREN Program budgets amongst and between individual projects and within the 2024-2027 timeframe supported by Authorized Work, subject to Commission approval.

Section 5.3 Cost Caps. SDCP shall use its best efforts to cap administrative costs at ten percent (10%) of the Maximum Contract Sum per year, and marketing and outreach costs to a maximum of six percent (6%) of the Maximum Contract Sum per year. SDCP acknowledges that it is the desire of the Commission to keep administrative and marketing costs as low as possible.

## **ARTICLE VI Payments**

Section 6.1 2024 – 2027 Funding Cycle. With respect to the Commission approved SDREN budget for years 2024 – 2027, SDG&E shall be responsible for collecting its required revenue as set forth in Exhibit A and disbursing the applicable funds to the SDREN Lead Portfolio Administrator in accordance with SDG&E's disbursement process and schedule as provided below.

Section 6.1.1 SDG&E Disbursement. SDG&E shall implement a quarterly disbursement schedule for the 2024-2027 funding cycle. The disbursement to the SDREN Lead Portfolio Administrator will start on January 31, 2025, and thereafter on the last Business Day of each quarter. There shall be a total of four disbursements in each calendar year for such 2024-2027 funding cycle. The amount of each disbursement is described in Exhibit A. The total maximum amount of the disbursement funding contribution from SDG&E to the SDREN Lead Portfolio Administrator for the 2024-2027 funding cycle shall not exceed its 2024-2027 total maximum contribution as set forth in Exhibit A.

Section 6.2 Funding Caps. Notwithstanding anything in here to the contrary, in no event shall SDG&E be required to disburse any monies to the SDREN Lead Portfolio Administrator relating to any applicable SDREN Program for a given funding cycle that would (in addition to any monies previously paid to the SDREN Lead Portfolio Administrator, including any Advanced Payments) otherwise cause such SDG&E's maximum contribution to be exceeded with respect thereto, each as reflected on Exhibit A.

Section 6.3 Budget Changes. Notwithstanding anything herein to the contrary, in accordance with Section 5.1, to the extent the Commission approves the budget by sector and segment or makes any other changes to the SDREN Program that would affect Exhibit A (including budgets for any funding cycle and maximum contributions by SDG&E with respect thereto), the Parties agree to work together to amend and update Exhibit A to reflect the latest Commission-approved SDREN budget or budget changes and SDG&E's maximum funding contribution for each SDREN Program calendar year without a need for formal amendment thereto, which such changes will be automatically incorporated and reflected without further action into Section 6.1 – 6.2.

Section 6.4 SDCP shall not retain any ratepayer funds erroneously disbursed or

paid by SDG&E under this Programs Agreement. If, at any time, SDG&E discovers that an amount was disbursed or paid to SDCP in error, either through the Commission audit, or by another means, the amount erroneously disbursed or paid to SDCP may, at the option of SDG&E, be used to offset future payment(s) due to SDCP or must promptly be returned by SDCP to SDG&E.

## **ARTICLE VII Marketing Materials**

Section 7.1 Use of SDG&E's Name. SDCP must receive prior review and written approval from SDG&E for the use of SDG&E's name or logo on any marketing or other SDREN Program materials. SDCP shall allow twenty (20) Business Days for SDG&E review and approval. If SDCP does not receive a response from SDG&E within the twenty (20) Business Day period, then it shall be deemed that SDG&E has disapproved such use.

Section 7.2 Use of SDCP's or SDREN's Name: SDG&E must receive prior review and written approval from SDCP for the use of the name or logo of SDCP or SDREN on any marketing or other SDREN Program materials using such information. SDG&E shall allow twenty (20) Business Days for SDCP's review and approval. If SDG&E does not receive a response from SDCP within the twenty (20) Business Day period, then it shall be deemed that SDCP has disapproved such use.

Section 7.3 SDCP shall not in any way represent to third parties, Customers or SDREN Program participants that SDG&E has endorsed or approved a product, a Third-Party Contractor, a Subcontractor, or their performance of any SDREN Program or any other energy efficiency services.

## **ARTICLE VIII Jurisdictional Warranty**

Section 8.1 SDCP warrants that it has full legal authority to implement the SDREN Programs as authorized by the Commission under this Programs Agreement.

Section 8.2 SDCP warrants that the geographic area in which the SDREN Programs under this Programs Agreement will be implemented is set forth on the attached Exhibit G.

## **ARTICLE IX Compliance With Applicable Law, Policies and Commission Regulations**

Section 9.1 SDCP shall comply with all federal, state (including Commission), and local laws, rules, regulations, ordinances, decisions, policies and directives that are



applicable to this Programs Agreement, including, but not limited to, labor and fair employment laws and prevailing wage laws, and all provisions required thereby to be included in contracts are hereby incorporated herein by this reference.

Section 9.2 Such regulatory compliance activities, including costs to maintain compliance, shall be paid for solely by SDREN for and on behalf of SDCP and the County of San Diego through authorized funding provided under this Programs Agreement, if available, inclusive of any Commission- imposed penalties or disallowances. These include but are not limited to:

- a. Filing and/or submitting required regulatory documents;
- b. Complying with all Commission, statutory and other applicable requirements, rules and policies;
- c. Maintaining adequate records for future financial and management audits and/or
- d. reviews;
- e. Maintaining savings and engineering assumptions consistent with current Commission rules or baselines;
- f. Maintaining necessary preventative controls on expenses;
- g. Maintaining and tracking all monies by task and function, Including complying with fund-shifting rules between the SDREN Programs;
- h. Responding to data requests and complying with all required reporting; and
- i. Any additional compliance requirements of SDCP, that arise during the effective period of this Programs Agreement, but that were not anticipated in this Programs Agreement, shall be the sole responsibility of the SDCP.

Section 9.3 Changes in Applicable Laws. After the Effective Date, if any legal, regulatory, or administrative authority issues a decision, ruling, order, or directive of any kind that is binding upon the Parties and that requires modification or addition of terms, covenants or conditions of this Programs Agreement in order for the Parties to be in compliance with same, then the Parties shall meet as soon as practicable to discuss proposed modifications to this Programs Agreement only to the extent required to bring it into compliance with such applicable laws.

Section 9.4 Non-Discrimination. No Party shall unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Each Party shall ensure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment and shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990(a)-(f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990(a)-(f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are made a part of this Programs Agreement. Each Party represents and warrants that it shall include the substance of the

nondiscrimination and compliance provisions in all subcontracts for its Authorized Work obligations. Additionally, the Parties shall conform to the applicable employment practices requirements of Executive Order 11246 of September 24, 1965, as amended, and applicable regulations promulgated thereunder.

## **ARTICLE X Reserved**

## **ARTICLE XI Limitation Of Certain Liabilities**

NO PARTY SHALL BE LIABLE TO THE OTHER(S) FOR THE OTHER'S OR OTHERS' INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY INCLUDING, BUT NOT LIMITED TO, LOSS OF USE OF OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, COST OF REPLACEMENT POWER OR CLAIMS FROM CUSTOMERS, RESULTING FROM A PARTY'S PERFORMANCE OR NONPERFORMANCE OF THE OBLIGATIONS HEREUNDER, OR IN THE EVENT OF SUSPENSION OF THE AUTHORIZED WORK OR TERMINATION OF THIS PROGRAMS AGREEMENT.

## **ARTICLE XII Confidential Information and Security Requirements**

Section 12.1 In the event SDG&E provides any Confidential Customer Information to SDCP pursuant to this Programs Agreement, the Parties agree that Confidential Customer Information is exempt from disclosure under state law, including the California Public Records Act Codified in Government Code Sections 7920.000 , et seq., and the exemptions provided in sections 7927.300, 7927.705, and 7922.000, among others, and will withhold from disclosure such materials unless ordered to do so by a court of competent jurisdiction. In the event SDG&E discloses any Confidential Customer Information pursuant to this Programs Agreement, whether to SDCP, any Third Party Contractor, or any other entity or person, SDG&E may require such entity or person to complete the Privacy GreenLight Process set forth in the attached Exhibit B, as well as a nondisclosure agreement and undergo a data security review, prior to and as a condition to its disclosure.

Section 12.2 Confidential Customer Information. "Confidential Customer Information" is any information (including without limitation name, address, telephone number, account number and billing and energy usage information) that can reasonably be used to identify an individual, family, household, residence, or non-residential Customer, as well as any Customer's information marked as confidential.

## **ARTICLE XII**

### **Term and Termination**

Section 13.1 Term. The term of this Programs Agreement shall be from the Effective Date until March 31, 2028, unless terminated earlier as provided in this section; provided, however, that the 90-day period following December 31, 2027, shall be for ministerial and administrative purposes only and that relate to close-out activities for the SDREN's Commission-approved budget and program plans.

Section 13.2 If SDCP possesses unspent funding authorized by the Decisions after July 1, 2028, including moneys repaid pursuant to financing terms, such funds shall, in consultation with SDG&E be returned to SDG&E's ratepayers unless otherwise directed by the Commission.

Section 13.3 Termination For Convenience. Neither Party shall have the right to terminate this Programs Agreement for their sole convenience, except as by an order, decision, or resolution of the Commission. Notwithstanding the foregoing, the Commission, by decision, order, or resolution, may deem that all or a portion of this Programs Agreement be terminated. In the event of such termination, SDG&E shall pay for Authorized Work performed prior to the date of termination, subject to and in accordance with the provisions of this Programs Agreement, but in no event shall SDG&E be liable for lost or anticipated proceeds or overhead on uncompleted portions of the Authorized Work.

Section 13.4 Declaration of Default. Any Party, by written notice of default, may declare a default of the whole or any part of this Programs Agreement by another Party, if the other Party has breached any of its obligations under the Programs Agreement.

Section 13.5 Opportunity to Cure. Upon delivery of a notice of default, the defaulting Party shall have a reasonable amount of time, but not greater than twenty (20) Business Days, to cure the default or demonstrate convincing progress toward a cure.

Section 13.6 Unless default is timely cured, the non-breaching Party may (i) notify Commission staff of the dispute; (ii) suspend payment of a particular invoice, or portion thereof, which may be subject to the dispute; (iii) suspend all further performance by the non-breaching Party until the breach is cured; (iv) seek an order, decision or resolution from the Commission authorizing and directing further action by the breaching Party ; or (v) any combination of the above. In the event the Commission authorizes and directs that the non-breaching Party can terminate all or part of the Programs Agreement, the non-breaching Party shall notify the breaching Party of such decision and thereafter all or a portion of the Programs Agreement, as authorized by the Commission, shall be deemed terminated.

Section 13.7 Subject to and in accordance with the provisions of this Programs Agreement, SDCP, as the SDREN Lead Portfolio Administrator, shall be entitled to funds

for all expenditures incurred or accrued up to the effective date of termination or suspension of the Programs Agreement, provided that any reports, invoices, documents or information required under the Programs Agreement are submitted in accordance with the terms and conditions of the Programs Agreement. The provisions of this Section 15.7 shall be SDCP's sole compensation resulting from any termination or suspension of this Programs Agreement. In the event of termination or suspension, SDCP shall (and shall cause each other person performing the same to) stop any Authorized Work then in progress and take action to bring the activities to an orderly conclusion, and the Parties shall work cooperatively to facilitate the termination of operations and of any applicable contracts.

#### **ARTICLE XIV Other Provisions**

Section 14.1 Notices. All notices under this Agreement will be in writing to the address specified below, or to another address specified in writing by a Party, and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.:

**SDCP:** Karin Burns  
PO Box 12716  
San Diego, CA 92112  
[kburns@sdcommunitypower.org](mailto:kburns@sdcommunitypower.org)

Copy to:

Colin Santulli  
PO Box 12716  
San Diego, CA 92112  
[csantulli@sdcommunitypower.org](mailto:csantulli@sdcommunitypower.org)

**SDG&E:** Dana Golan  
8326 Century Park Count  
San Diego CA 92123  
[dgolan@sdge.com](mailto:dgolan@sdge.com)

Copy to:

Hollie Bierman  
8326 Century Park Count  
San Diego CA 92123  
[hbierman@sdge.com](mailto:hbierman@sdge.com)

Section 14.2 Amendments. This Programs Agreement may be changed only by written amendment(s) duly executed by SDG&E and SDCP.

Section 14.3 Notification of Certain Matters. SDCP shall give prompt written notice to SDG&E of (i) the occurrence or non-occurrence of any change, condition or event, the occurrence or non-occurrence of which would render any representation or warranty of SDCP contained in this Agreement, if made on or immediately following the date of such event, untrue or inaccurate, (ii) any failure of SDCP to comply with or satisfy any covenant or agreement to be complied with or satisfied by it hereunder.

Section 14.4 Successors and Assigns. The Programs Agreement shall be binding on the Parties and their respective successors and assigns. No Party shall assign, delegate, or transfer the Programs Agreement or any interest under it without the prior written consent of the other Party or the Commission, as applicable. Any purported assignment of the Programs Agreement by SDCP either by operation of law, order of any court, or pursuant to any plan of merger, consolidation or liquidation, shall be deemed an assignment by SDCP for which prior consent is required, and any assignment made without any such consent shall be void and of no effect as among the Parties. Notwithstanding the foregoing, if SDG&E is requested or required by the Commission to assign its rights and/or delegate its duties hereunder, in whole or in part, SDG&E shall notify SDCP and be released from all obligations hereunder arising after the effective date of such assignment, both as principal and as surety.

Section 14.5 Remedies Cumulative. All remedies provided for in this Programs Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to any Party at law or in equity.

Section 14.6 No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any person (including without limitation, the County of San Diego, Third-Party Contractor, Subcontractor or Customer) other than the Parties and their respective successors and permitted assigns any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

Section 14.7 No Construction Against Drafter. No provision of this Programs Agreement shall be construed against any Party merely because that Party drafted the document. Each Party represents that it has had time to review and discuss provisions of the Programs Agreement with interested parties, including its attorneys, and understands the terms and obligations as written.

Section 14.8 Severability. If any section, provision, or portion of the Programs Agreement is held to be invalid, illegal, or void by a court of proper jurisdiction, or is terminated by the Parties by direction or by order of the Commission or by the Commission itself, or if an individual Program is terminated by the Parties or at the

direction or order of the Commission, such decision shall not impair, affect, or invalidate the remainder of this Programs Agreement. .

Section 14.9 No Waiver. No waiver by any Party of any default or breach of any provision of this Programs Agreement shall constitute a waiver of any other default of breach. Failure of a Party to enforce at any time, or from time to time, any provision of this Programs Agreement shall not be construed as a waiver thereof.

Section 14.10 Survival. Despite the completion or termination of a Program or any service, scope of work with respect to individual projects supported by Authorized Work, Authorized Work, activities or deliverables under this Programs Agreement, or any portion of the Programs Agreement, the Parties shall continue to be bound by those provisions of the Programs Agreement which by their nature survive the completion or termination.

Section 14.11 Further Assurances. The Parties, at the request of another, shall perform those actions, including executing additional documents and instruments, reasonably necessary to give full effect to the full performance of the Programs Agreement.

Section 14.12 Conflict of Interest. This Programs Agreement is subject to the Political Reform Act, Government Code Section 1090, Government Code Section 84308, and other requirements governing conflicts of interest, campaign contributions, and gifts, and SDG&E agrees to provide information to SDCP, upon request, to ensure the activities contemplated under this Programs Agreement do not conflict with those laws.

Section 14.13 Governing Law: Venue. This Programs Agreement shall be interpreted, governed, and construed under the laws of the State of California as executed and to be performed wholly within the State of California without regard to its conflict of laws provisions. Any action brought to enforce or interpret this Programs Agreement shall be filed in San Diego County, California.

Section 14.14 Counterparts. This Programs Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument, so long as duplicate originals are delivered to all Parties.

## **ARTICLE XV**

### **Authorization Warranties**

Section 15.1 SDCP represents and warrants that the person executing this Programs Agreement is its authorized agent who has actual authority to bind it to each and every term, condition, and obligation of this Programs Agreement, and that all requirements of SDCP have been fulfilled to provide such actual authority.

Section 15.2 SDG&E represents and warrants that the person executing this

Programs Agreement for SDG&E is an authorized agent who has actual authority to bind SDG&E to each and every term, condition, and obligation of this Programs Agreement and that all requirements of SDG&E have been fulfilled to provide such actual authority.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE TO  
SAN DIEGO REGIONAL ENERGY NETWORK  
ENERGY EFFICIENCY  
PROGRAMS AND BUDGET AGREEMENT  
FOR YEARS 2024-2027**

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

**SAN DIEGO COMMUNITY POWER**

**SDG&E**

By:

By:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
SDCP General Counsel



## EXHIBIT A

### Maximum Contract Sum and SDG&E Maximum Contribution

#### Collections by SDG&E to Support SDREN Budget

Year	SDREN Budget	Electric (60%)	Gas (40%)
2024	\$15,852,720	\$9,511,632	\$6,341,088
2025	\$32,755,736	\$19,653,441	\$13,102,294
2026	\$36,031,310	\$21,618,786	\$14,412,524
2027	\$39,634,441	\$23,780,665	\$15,853,777
<b>Total</b>	<b>\$124,274,207</b>	<b>\$74,564,524</b>	<b>\$49,709,683</b>

#### SDG&E Maximum Contribution

	Total	Q4 2024	Q1 2025	Q2 2025	Q3 2025	Q4 2025	Q1 2026	Q2 2026	Q3 2026	Q4 2026	Q1 2027	Q2 2027	Q3 2027	Q4 2027
<i>Payments made at the end of the quarter (e.g. Q4 2024 payment would be paid around 12/31/24)</i>														
2024 Payments (Electric) - collections begin 10/1/24	\$ 9,511,632	\$2,377,908	\$2,377,908	\$ 2,377,908	\$2,377,908									
2024 Payments (Gas) - collections begin 01/01/25	\$ 6,341,088		\$1,585,272	\$ 1,585,272	\$1,585,272	\$1,585,272								
	<b>\$ 15,852,720</b>													
2025 Payments (Electric) - collections begin 01/01/25	\$ 19,653,441		\$4,913,360	\$ 4,913,360	\$4,913,360	\$4,913,360								
2025 Payments (Gas) - collections begin 01/01/25	\$ 13,102,294		\$3,275,574	\$ 3,275,574	\$3,275,574	\$3,275,574								
	<b>\$ 32,755,735</b>													
2026 Payments (Electric) - collections begin 01/01/26	\$ 21,618,786						\$5,404,697	\$5,404,697	\$5,404,697	\$5,404,697				
2026 Payments (Gas) - collections begin 01/01/26	\$ 14,412,524						\$3,603,131	\$3,603,131	\$3,603,131	\$3,603,131				
	<b>\$ 36,031,310</b>													
2027 Payments (Electric) - collections begin 01/01/27	\$23,780,665										\$5,945,166	\$945166.25	\$945166.25	\$945166.25
2027 Payments (Gas) - collections begin 01/01/27	\$15,853,777										\$3,963,444	\$3,963,444	\$3,963,444	\$3,963,444
	<b>\$39,634,442</b>													

#### Payment Schedule

Quarter	Payment Date	Amount
Q4 2024	1/31/2025	\$2,377,908
Q1 2025	3/31/2025	\$12,152,114
Q2 2025	6/30/2025	\$12,152,114
Q3 2025	9/30/2025	\$12,152,114
Q4 2025	12/31/2025	\$9,774,206
Q1 2026	3/31/2026	\$9,007,828
Q2 2026	6/30/2026	\$9,007,828
Q3 2026	9/30/2026	\$9,007,828
Q4 2026	12/31/2026	\$9,007,828
Q1 2027	3/31/2027	\$9,908,611
Q2 2027	6/30/2027	\$9,908,611
Q3 2027	9/30/2027	\$9,908,611
Q4 2027	12/31/2027	\$9,908,611
<b>Total</b>		<b>\$124,274,207</b>

## **EXHIBIT B**

### **SDG&E Privacy GreenLight Process**

Details on SDG&E's Privacy Greenlight Process is available on the website located at:  
<https://energydata.sdge.com/showAboutProcess#:~:text=Privacy%20GreenLight%20as,sists%20third%20parties%20with%20requests%20for,on%20the%20Energy%20Data%20Request%20Program%20home%20page>

## **EXHIBIT C**

### **Energy Efficiency Policy Manual Version 6, April 2020**

As detailed on the website located at: [6442465683-eepolicymanualrevised-march-20-2020-b.pdf \(ca.gov\)](https://www.sfpuc.org/sites/default/files/6442465683-eepolicymanualrevised-march-20-2020-b.pdf)

**EXHIBIT D**

**Joint Cooperation Memo**

## **2024 Joint Cooperation Memo (JCM)**

**San Diego Regional Energy Network (SDREN) and  
San Diego Gas & Electric Company (SDG&E)**

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## I. OVERVIEW OF COORDINATION APPROACH

The 2024-25 Joint Cooperation Memorandum (JCM) between San Diego Gas and Electric (SDG&E) and the San Diego Regional Energy Network (SDREN) covers energy efficiency (EE) program activity and collaboration in program years 2024-2025.

On January 5, 2024, San Diego Community Power (SDCP), on behalf of SDREN, submitted its Motion for Approval of Energy Efficiency Portfolio Application (SDREN Application).<sup>1</sup> On August 7, 2024, the California Public Utilities Commission (CPUC) issued D.24-08-003, which approved the proposal for a San Diego Regional Energy Network and authorized SDREN as a new EE Portfolio Administrator (PA).<sup>2</sup> Decision 24-08-003 approved SDREN's Application in its entirety, including its 2024-2027 energy savings goals and funding, as well as its 2024-2031 strategic business plan.<sup>3</sup>

**SDREN's vision is to be a driving force for communities to adopt clean, reliable energy through community-driven solutions that contribute to local and state EE and climate goals.** SDREN's overall portfolio goals are to advance decarbonization, provide comprehensive EE services that improve outcomes for underserved and HTR communities, and accelerate the clean energy economy through workforce opportunities, which support attainment of California's ambitious 2030 and 2045 climate goals.

SDREN's proposed EE portfolio is framed by three key principles—to advance environmental equity, catalyze collaboration, and support community-driven change. SDREN's long-term goal is to ensure an equitable transition to a carbon-free building sector in the San Diego region by 2050, seeking higher participation from HTR and underserved communities and reducing their energy burden.

SDREN's approved Business Plan includes a budget of \$124,274,206 to fund EE programs through 2027. SDREN's portfolio empowers San Diegans to conserve energy, reduce stress on the grid, and lower greenhouse gas (GHG) emissions that make the state more resilient and help reach its climate goals. The portfolio is organized by segment and sectors as follows:

- **Segments:** Resource Acquisition, Market Support, Equity, and Codes & Standards
- **Sectors:** Commercial, Cross-cutting (Workforce, Education and Training (WE&T) and Codes and Standards (C&S)), Public, and Residential

The suite of approved programs is designed to address the diverse needs of the San Diego residential, commercial, public, and cross-cutting sectors. Programs include:

### Residential Sector:

- **Single Family Program:** Creates a concierge-style home energy advisor service, connecting residents to program information, funding and financing opportunities, and offers rebates and incentives.

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<sup>1</sup> Rulemaking ("R.") 13-11-005, Motion of San Diego Community Power on Behalf of the San Diego Regional Energy Network for Approval of Energy Efficiency Portfolio Application (Jan. 5, 2024); see also R.13-11-005, Notice of Availability of Application of San Diego Community Power on Behalf of the San Diego Regional Energy Network for Approval of 2024-2031 Strategic Business Plan, 2024-2027 Portfolio Plan, and Budget (Jan. 5, 2024).

<sup>2</sup> D.24-08-003, OP 1 (Aug. 7, 2024).

<sup>3</sup> Id. at 1, OP 1.



- **Multifamily Program:** Targets multifamily property owners, managers and tenants offering incentives and rebates and customized technical assistance to address facility upgrades that impact both common area measures and renter-specific in-unit utility bill savings.

#### Commercial Sector:

- **Market Access Program:** Provides performance-based incentives to project developers who deliver peak demand reductions and verified energy savings. This program offers customizable services and financial benefits to underserved businesses and delivers EE and electrification upgrades.
- **Efficient Refrigeration Program:** Offers EE education and no-cost, direct installation of efficient refrigeration equipment to small businesses, supporting energy cost savings and stocking of healthy, fresh, affordable food products.
- **Small- and Medium-Sized Business Energy Coach:** Engages with small- and medium-sized businesses providing technical assistance and facility benchmarking and EE opportunity assessments, supporting access to available funding and financing, and offering measures at no cost.

#### Public Sector:

- **Tribal Engagement:** Creates a pathway for Tribes and Tribal organizations in the San Diego region to develop and implement energy-related initiatives.
- **Climate Resilience Leadership:** Provides customized guidance and technical services to public agencies for identifying and implementing EE projects.

#### Cross-Cutting:

- **Workforce Training and Capacity Building:** Focuses on skill development for new and incumbent workers, aiming to build accessible pathways into the green workforce.
- **Energy Pathways Program:** Provides high school students with personalized guidance and access to a diverse network of mentors and training resources to develop students' skills and awareness of green career pathways.
- **Codes and Standards Program:** Supports local government permitting agencies to enhance energy code compliance and embrace advanced energy codes, standards, and policies.

All SDREN programs target HTR and underserved communities, which comprise approximately 56% of the region's population. SDREN is directing 46% of its portfolio to Equity programs, while Market Support programs comprise 34%, Resource Acquisition 14%, and Codes and Standards 6%.

The CPUC's Decision (D.)18-05-041 requires EE PAs with overlapping service areas to submit a joint cooperation memorandum (JCM) to coordinate program activities. Specifically, the directive states on page 97: "We will require the PAs (RENs, Investor-owned Utilities (IOUs), and Community Choice Aggregators (CCAs) to develop a joint cooperation memo to demonstrate how they will avoid or minimize duplication for programs that address a common sector (e.g., residential or commercial) but pursue different activities, pilots that are intended to test new or different delivery models for scalability, and/or programs that otherwise exhibit a high likelihood of overlap or duplication and are not targeted at hard-to-reach customers. For such programs, each PA must explicitly identify and discuss how its activities are complementary and not duplicative of other PAs' planned activities."

SDREN is committed to ensuring cooperation and coordination with San Diego Gas & Electric (SDG&E). SDREN’s proposed portfolio builds on the comprehensive regional sustainability and decarbonization planning in the region, and fills gaps and complements the programs provided by SDG&E. SDREN’s portfolio-level strategies incorporate six delivery methods, one of which is integrating effective coordination and collaboration to identify synergies, reduce costs and complexity, and deliver high-value programs that reflect local priorities and needs. As such, SDG&E and SDREN have a shared interest and commitment to effective coordination.

Both SDREN and SDG&E will communicate and collaborate regularly to ensure their respective programs do not create customer confusion or unnecessary duplication of services. The joint PAs will provide information and referrals to programs across program implementers, including those outside one another’s implementation focus, and will conduct ongoing performance assessments to reduce costs and increase energy savings.

The JCM includes the following information:

- A description of the process SDREN and SDG&E will follow to cooperate with each other with respect to programs for the common sectors of residential, public, commercial, and cross-cutting WE&T and C&S.
- An overview of the programs SDREN and SDG&E intend to offer in common areas, and the current implementer (if known).
- An overview of the coordination approach.
- A description of how SDREN’s anticipated offerings satisfy the CPUC criteria for REN activities (D.12-11-015 and reaffirmed in D.19-12-021).

## A. Sector Coordination Meetings

SDREN and SDG&E will organize regularly scheduled sector coordination meetings following the structure described below. These meetings will provide a regular venue to raise any potential challenges, opportunities or issues at the sector or program level.

*Figure 1. Sector Coordination Meeting Structure*

<b>Frequency</b>	<ul style="list-style-type: none"> <li>• Regular sector coordination meetings will be scheduled monthly. Meetings may be canceled at the discretion of SDREN and SDG&amp;E if there are no agenda items. Meeting frequency will be revisited quarterly to ensure the appropriate frequency.</li> <li>• Meeting scheduling will be informed by each PA’s availability.</li> </ul>
<b>Attendees</b>	<ul style="list-style-type: none"> <li>• Attendees will include at least one direct representative from each PA.</li> <li>• Third-party implementers as well as PA policy leads will be included at the discretion of each PA based on meeting agenda content to ensure efficient use of resources.</li> <li>• Meetings will be held virtually. When possible or in conjunction with other in-person activities, PAs will hold in-person or hybrid meetings depending upon PA availability.</li> </ul>
<b>Agenda</b>	<ul style="list-style-type: none"> <li>• Sector coordination meetings will follow a structured format.</li> <li>• Topics discussed in sector coordination meetings may include, but are not limited to, program entry, program closure, program status, program changes that may impact how the programs possibly conflict or compete with each other (duplicity), PA staffing, key</li> </ul>

	<p>customer contact updates, customer confusion, data requests, successes that are repeatable through best practices, and potential overlap with new market trends or policy changes.</p> <ul style="list-style-type: none"> <li>• Additional topics (walk-in agenda topics) may be included.</li> <li>• A sample of a possible sector coordination meeting agenda template is provided as Appendix E.</li> </ul>
<b>Facilitation</b>	<ul style="list-style-type: none"> <li>• SDREN will facilitate sector coordination meetings and will contact SDG&amp;E by e-mail two weeks prior to the meeting to request items for agenda inclusion.</li> <li>• Completed agendas will be sent to SDG&amp;E one week prior to the scheduled meeting date.</li> <li>• SDG&amp;E will distribute draft notes and follow-up items to meeting attendees within three business days of the meeting. SDREN will provide edits to SDG&amp;E within two business days of receiving draft notes. SDG&amp;E will finalize and distribute final notes within two business days of receiving edits from SDREN.</li> </ul>

## B. Program Updates Outside of Sector Coordination Meetings

### Program Changes and Closures

SDREN and SDG&E will discuss program changes and program closures as needed outside of sector coordination meetings to support changes based upon lessons learned once SDREN and SDG&E programs are in the market. Program changes or closures are intended to support program coordination and align efforts where streamlining programs may be advantageous. PAs will follow the program opening and closure procedures as detailed in the *Energy Division Process Checklist to Energy Efficiency Program Administrators for Program Closures and Launches*, and as required in Decision (D.) 21-05-031.

Program changes or closures may also occur for reasons outside of SDG&E or SDREN's control, for example, if a third-party implementer goes bankrupt, or is unable to perform their contractual duties. In such cases, SDREN and SDG&E will communicate these issues to each other outside of sector coordination meetings as needed and may use the optional program change form included in Appendix D<sup>4</sup>. In the event that unexpected program closures occur, SDREN and SDG&E agree to make a good faith effort to notify each other of said closures prior to distributing the CPUC-required webinar notice to the service list. This is a courtesy measure intended to provide the mutual benefit of prudent and efficient portfolio management to both PAs, with overlapping sectors being of primary interest (e.g., not closures within the agriculture or industrial sectors). Confidential and market sensitive information associated with the unexpected closure shall not be disclosed.

SDREN and SDG&E agree to meet in advance of any major filing, which may include, without limitation, SDG&E's off cycle Portfolio Application (expected Q1 2025), the PA midcycle True-up Advice Letters (09/01/25), and the PA 2028-2031 Portfolio Plan (02/13/2026).

### New Program Entrants

Pursuant to D.24-08-003, issued on August 7, 2024, SDREN is authorized to offer 10 new programs in the residential, commercial, public and cross-cutting WE&T and C&S sectors. In 2024-2025, SDREN will conduct activities to make these programs available across San Diego County. SDG&E anticipates launching nine new programs in 2024-2025 in the residential and commercial sectors as authorized in its

<sup>4</sup> Per OP 12 and page 47 of D. 21-05-031, a webinar or workshop shall not be required in the narrow circumstance where a third-party program is ending according to its original contract term length.

2024-2027 Portfolio Plan. SDREN and SDG&E do not anticipate any additional new program entrants during 2024-2025, beyond what is described here; provided, however, that both parties agree to inform the other in advance of any change in program planning during this timeframe.

The sector coordination meetings described in each of the sector strategies will include discussion and coordination for the planned new program entrants described here. The process to be followed for any new program entrants is described in Figure 2. To support coordination and awareness about the program launch progress, SDREN will inform SDG&E about the solicitation progress during the regularly scheduled sector coordination meetings. SDG&E's solicitations schedules are updated on the Proposal Evaluation & Proposal Management Application (PEPMA). SDG&E and SDREN may provide advance notice regarding any expected and upcoming changes to their respective solicitation schedule during sector coordination meetings, to the extent such information is not anti-competitive or market sensitive.

**Figure 2. Process for New Program Entrants<sup>5</sup>**

	Local and/or Third-Party Programs	SDG&E=Lead Statewide Programs
<b>Meeting 1</b>	Prior to announcing any public webinar and filing the subsequent advice letter, Managing PA will schedule an initial meeting with SD PA lead to provide notification of planned program opening, or will join an existing sector coordination meeting.	
<b>Trigger</b>	Public webinar complete, Advice Letter for new program is approved and (IP) is updated.	
<b>Meeting 2</b>	Managing PA will schedule a meeting with overlapping SD PA leads only.	Managing PA will schedule a meeting with other CA PA leads only.
	<b>Purpose:</b> 1.) Discuss new program(s) in more depth and have discussions on how the programs should and will be coordinated.	
<b>Meeting 3</b>	Managing PA will schedule a meeting to include 3P teams + overlapping SD PA.	Managing PA will schedule a meeting to include 3P teams + all CA PAs.
	<b>Purpose:</b> 1.) Review program in detail with overlapping PAs and 3P implementers. 2.) Resolve any overlapping issues that might be identified in meeting 2. 3.) Determine future coordination meeting schedule, if necessary.	

### C. Customer Referrals

Customers eligible for multiple PA programs will be referred to appropriate programs as determined by SDREN and SDG&E. To facilitate the process, SDREN and SDG&E will develop and maintain program points of contact for customer referrals. Customer referrals may be included as topics in sector coordination meetings as determined by SDREN and SDG&E. SDREN and SDG&E are committed to developing and maintaining sector specific processes to allow customers to experience seamless handoffs to SDREN or SDG&E programs, respectively. Customer referral processes will be documented in sector or program-specific customer project and referral tree process flow charts to be maintained as separate documents from this JCM and revised and updated as necessary.

<sup>5</sup> Decision 21-05-031 at page 46 discusses the process for program openings and closures. Program openings also applies to instances where an IOU portfolio administrator is making a case for a new statewide program elevated from a regional or local program, or where there is a change in the lead administrator for a statewide program.

## II. STRATEGIES BY SECTOR

### A. Public

SDREN will offer two new public sector programs anticipated to launch in 2025:

- The **Climate Resilience Leadership** (CRL) program is a market support program targeting cities, the County of San Diego, public education agencies, special districts, and tribes, with a focus on agencies serving underserved and HTR communities. The program offers technical assistance, incentives via direct install, outreach and education, and funding and financing support.
- The **Tribal Engagement** (TE) program is an equity program aimed to serve Tribes throughout San Diego County. The TE program will create a pathway for tribes and tribal organizations in the San Diego region to develop, propose, and implement energy-related initiatives to address their unique needs and contribute to sustainability, resilience, and economic development within tribal communities. The program offers technical assistance and outreach and education.

During 2024-2025, SDG&E's public sector offerings include three regional programs administered by SDG&E, and three statewide programs administered by other lead IOUs (PAs). SDG&E's regional public sector offerings include:

- **CAP4ZNE**, a resource acquisition program, intended to provide a concierge approach tailored to local government partners for EE and GHG reductions. The program is no longer accepting new customers (as of July 26, 2024) and the program will be closed as of October 16, 2024, if approved via Advice Letter in 30 days.
- **The SD EnergyLink/Federal Energy Program** is a resource acquisition program that offers cash incentives to SDG&E customers on federal properties and Native American lands to install new, energy efficient technology, equipment, or systems.
- **Retail Offices and Wholesale** is planned to be a resource acquisition program launching early 2025. The program is a downstream commercial retrofit program and will emphasize the property management market, leveraging key players in the region to deliver solutions to retail, office, and wholesale customers.
- **On-Bill Financing** is a market support program that works in conjunction with SDG&E's rebate and incentive programs to offer eligible customers zero-percent financing for qualifying facility improvements.

The statewide public sector offerings administered by other IOUs include the Higher Education Energy Efficiency (HEEP) program, the California Energy Design Assistance (CEDA) mixed fuel program, and the Statewide Water Infrastructure and System Efficiency (WISE) program, as further described below. SDREN and SDG&E do not coordinate on programs for which SDG&E is not the lead Program Administrator. Coordination with statewide programs is described in section F.

- **The HEEP program**, a resource acquisition program, is available to existing higher education facilities owned, operated, or occupied by University of California, California State University, and/or California Community Colleges. HEEP offers technical assistance, no cost energy assessments, and incentives.

- **The CEDA program**, a resource acquisition program, promotes the electrification and decarbonization of new building construction or major renovation offering energy design assistance and incentives.
- **The Statewide WISE Program**, a resource acquisition program, assists water/wastewater pumping customers in identifying EE solutions, securing incentives to help offset installation costs, and providing engineering services.

A total of six programs, consisting of four local programs and three statewide programs, will be offered for the public sector in San Diego County during 2024-2025. Of these, two SDREN programs are anticipated to launch in 2025, while one SDG&E program is anticipated to close in 2024. By the end of 2025, this will result in three regional programs and two statewide programs.

### Public Sector Coordination Meetings

SDREN and SDG&E have agreed to hold a monthly 60-minute public sector coordination meeting upon SDREN authorization, with the option to revisit meeting frequency on a quarterly basis. The purpose of the public sector coordination meetings will be to discuss coordination activities for public sector programs. Additional targeted public sector meetings may be warranted and will be coordinated on an ad-hoc basis.

### Data Sharing Protocols

D.23-02-002 (Decision Addressing Energy Efficiency Third-Party Processes and Other Issues) dated February 2, 2023, states that the IOUs will share disaggregated data requested by RENs and third-party implementers and/or their authorized agents within ten days after notifying the requestor that the requestor meets the following requirements:

- A current cyber security review by each IOU supplying confidential information.
- A non-disclosure agreement directly with each IOU supplying confidential information.
- The ability to receive secure data transmissions from the IOU.
- A current contract for the program, either as the PA or as prime or subcontractor with a statement of work (SOW) that requires all the confidential data received.

To facilitate and improve data sharing within the ten-day period, SDG&E sought cost recovery to fund data sharing infrastructure, in Advice Letter (AL) 4214-E/3191-G, which is pending approval.

SDREN will determine any necessary customer account or PII data needed for SDREN program implementation and SDREN and/or its implementers will go through SDG&E's Privacy Green Light process for authorization to receive confidential information. SDG&E will provide requested data within the required timeframe (10 days) to support SDREN project timelines. SDG&E will notify SDREN within a reasonable amount of time before the due date if an extension is necessary. SDREN and SDG&E anticipate that data requests and data sharing protocols will be ongoing agenda topics in future sector meetings, particularly once SDREN onboards its third-party implementers and as SDG&E builds out the self-service data sharing platform contemplated in AL 4214-E/3191-G, if approved.

### Prior Participation

During 2024-2025, once SDREN launches its public sector programs and begins enrolling customers, SDREN will determine customers' prior participation by submitting a recurring monthly data request to



SDG&E after being approved via SDG&E's Privacy Green Light process. This will aid in understanding what EE programs a customer has participated in or is currently participating in and what measures the customer has received. This process to determine prior participation will be documented in the SDREN-SDG&E Public Sector Coordination Protocols document to be developed and maintained by SDREN and SDG&E in future public sector coordination meetings upon onboarding SDREN's third party implementer(s) and will be revisited quarterly, at a minimum, and will be updated as determined by SDREN and SDG&E.

### **Customer/Project Referral**

The SDREN-SDG&E Public Sector Coordination Protocols document will include a decision tree diagram detailing steps for referrals to clearly break down different paths of action available based on customer eligibility and interest.

SDREN programs aim to leverage SDG&E and statewide program offerings to maximize benefits to customers and prevent overlap by coordinating referrals.

### **Customer Confusion and Double-Dipping Mitigation Tactics**

SDREN and SDG&E outlined the plan below for transparent communication and coordination to prevent duplication of efforts. This transparency between PAs regarding outreach and enrollment will help mitigate customer confusion and avoid double-dipping within the public sector.

- PS-1** SDREN's Climate Resilience Leadership (CRL) program focuses on public sector customers located in or serving underserved/HTR communities. This program is anticipated to be available in 2025 and will coordinate with SDG&E's public sector program(s) to maximize benefits to customers. This program does not duplicate any SDG&E program.
- PS-2** SDREN's Tribal Engagement (TE) program specifically serves tribes and does not duplicate any SDG&E program and has synergies with SDG&E's Federal program which also has a component that targets tribal participants.
- PS-3** SDREN and SDG&E will jointly develop a Public Sector Coordination Protocols document leveraging best practices from other PAs to outline a streamlined decision tree process flow. This document will be finalized upon onboarding SDREN's third-party implementers and will be revisited at least once quarterly by SDREN and SDG&E to incorporate any necessary improvements.
- PS-4** SDREN and SDG&E will maintain ongoing transparency by sharing pipeline/enrolled customers and avoid duplication of efforts. SDREN and SDG&E determined developing and sharing lists on a monthly basis is appropriate. Sharing enrollees or participants will ensure coordination and help maximize customer participation. Data sharing protocols will be leveraged where necessary.
- PS-5** SDREN and SDG&E have agreed to share relevant information about customer targets. This will require some trial-and-error between the PAs and will be an evolving process. The goal of this is to avoid customer confusion and help with marketing efforts.

## **B. Residential**

SDREN will offer two new equity residential sector programs anticipated to launch in 2025:

- The **Multifamily** program serves buildings with two or more units and targets multifamily property owners/managers as well as tenants to address both common area and in-unit upgrades. The program offers technical assistance, customized engagement strategies, a systems tune-up assessment and energy audit as well as EE kits and education opportunities for renters. Participants will receive direct install and rebates of selected measures that can stack with, or meet gaps, of other program offerings.
- The **Single-Family** program provides a home energy advisor to serve HTR and underserved residents to bring personal concierge-style service to connect them to program information and funding and financing opportunities. The program offers personal support connecting residents to programs and relevant program contractors, educational materials including an EE starter kit, and direct install and rebates of selected measures that can stack with, or meet gaps, of other program offerings.

SDG&E's residential sector offerings include six regional programs and three statewide programs, all currently run by SDG&E as the lead IOU. The regional programs include:

- **Residential Zero Net Energy Transformation (RZNET)**, a resource acquisition program serving multifamily and manufactured housing customers and offers access to an energy advisor and selected measures at no cost.
- **Residential Energy Solutions (RES)**, a resource acquisition program serving single-family homeowners and renters offering a no-cost energy assessment and direct install of selected measures.
- **Home Energy & Audits (HEAR) Program**, a resource acquisition program offering behavioral intervention strategies to residential customers to encourage behavior changes that lead to energy savings.
- **Market Access Program (CORE-MAP)**, a resource acquisition program offered both for residential and commercial customers. This program is a modified version of SDG&E's Summer Reliability Market Access Program that allows SDG&E to continue offering MAP participation while SDG&E completes the Third-Party Market Access Program solicitation, which is set to end mid-2025, at which point Third-Party MAP would take CORE-MAP's place.
- **The Residential Equity Education and Outreach Program aka the Community Education and Outreach (CEO) program** is an equity program serving residential customers in disadvantaged communities (DACs) and HTR communities through in-language community booths, seminars, door hangers, and school outreach seeking to increase customer participation across SDG&E's EE and other demand-side management programs.
- **Customer Home Electrification Readiness Program (CHERP)** is a non-resource program that assists residential customers with the installation of EE measures with a focus on fuel substitution/electrification, renewable energy, energy storage equipment, demand response, and additional electrification opportunities (e.g., EV) as they become available.

The statewide programs include:

- **Golden State Rebates**, a midstream resource acquisition program offering self-service incentives of EE measures at participating retailers and distributors for plug load and appliances for qualifying customers.



- **Comfortably California**, a resource acquisition program that offers resources and incentives to distributors, manufacturers, and retailers for selling specific, high-efficiency HVAC equipment to qualifying customers, and provides no-cost training to contractors and technicians.
- **Statewide Residential HVAC Quality Installation and Quality Maintenance (QIQM)**, an equity program that provides incentives and training resources to HVAC contractors.

By the end of 2025, a total of eight regional programs and three statewide programs will be available for residential customers in San Diego County.

### Residential Sector Coordination Meetings

SDREN and SDG&E have agreed to hold a monthly 60-minute residential sector coordination meetings upon SDREN authorization with the option to revisit meeting frequency on a quarterly basis. The purpose of the residential sector coordination meetings will be to discuss coordination activities for residential sector programs. Additional targeted residential sector meetings may be warranted and can be coordinated on an ad-hoc basis.

### Data Sharing Protocols

D.23-02-002 states that the IOUs will share disaggregated data requested by RENs and third-party implementers and/or their authorized agents within ten days after notifying the requestor that the requestor meets the following requirements:

- A current cyber security review by each IOU supplying confidential information.
- A non-disclosure agreement directly with each IOU supplying confidential information.
- The ability to receive secure data transmissions from the IOU.
- A current contract for the program, either as the program administrator or as prime or subcontractor with a statement of work that requires all the confidential data received.

To facilitate and improve data sharing within the ten-day period SDG&E sought cost recovery to fund data sharing infrastructure, in AL 4214-E/3191-G, which is pending approval.

SDREN will determine any necessary customer account or PII data needed for SDREN program implementation and SDREN and/or its implementers will go through the SDG&E Privacy Green Light process for authorization to receive confidential information. SDG&E will provide requested data within the required timeframe (10 days) to support SDREN project timelines. SDG&E will notify SDREN within a reasonable amount of time before the due date if an extension is necessary. SDREN and SDG&E anticipate that data requests and data sharing protocols will be ongoing agenda topics in future sector meetings, particularly once SDREN onboards its third-party implementers and as SDG&E builds out the self-service data sharing platform contemplated in AL 4214-E/3191-G, if approved..

### Prior Participation

During 2024-2025, once SDREN launches its residential sector programs and begins enrolling customers, SDREN will determine a customer's prior participation by submitting a recurring monthly request to SDG&E after being approved via SDG&E's Privacy Green Light process. This will aid in understanding what EE programs a customer has participated in or is currently participating in and what measures the customer has received. This process to determine prior participation will be documented in the SDREN-SDG&E Residential Sector Coordination Protocols document to be developed and maintained by SDREN and SDG&E in future residential sector coordination meetings upon onboarding SDREN's third-party

implementer(s) and will be revisited quarterly, at a minimum, and will be updated as determined by SDREN and SDG&E.

### **Customer/Project Referral**

The SDREN-SDG&E Residential Sector Coordination Protocols document will include a decision tree diagram detailing steps for referrals to clearly break down the different paths of action available based on customer eligibility and interest.

SDREN programs aim to leverage SDG&E and statewide program offerings to maximize benefits to customers and prevent overlap.

### **Customer Confusion and Double-Dipping Mitigation Tactics**

SDREN and SDG&E have outlined the plan below for transparent communication and coordination to prevent duplication of efforts. This transparency between PAs regarding outreach and enrollment helps mitigate customer confusion and avoids double-dipping within the residential sector.

- RE-1** SDREN's Multifamily program focuses on multifamily buildings of two or more units in underserved and HTR communities. This program is anticipated to be available in 2025 and will coordinate with SDG&E's RZNET program to ensure customers are channeled appropriately. This program will also coordinate with SDG&E's HEAR program to maximize benefits to customers. This program does not duplicate any SDG&E program and has synergies with SDG&E's Multifamily program.
- RE-2** SDREN's Single-Family program focuses on detached, renter or owner-occupied single-family residences in underserved and HTR communities. This program is anticipated to be available in 2025 and will coordinate with SDG&E's RES program to ensure customers are channeled appropriately. This program will also coordinate with SDG&E's HEAR program to maximize benefits to customers. This program does not duplicate any SDG&E program and has synergies with SDG&E's Single-Family program.
- RE-3** SDG&E's CEO program will include SDREN program resources in its outreach.
- RE-4** SDREN and SDG&E will jointly develop a Residential Sector Coordination Protocols document leveraging best practices from other PAs to outline a streamlined Residential Customer Project decision tree process flow. This document will be finalized upon onboarding SDREN's third-party implementers and will be revisited at least once quarterly by SDREN and SDG&E to incorporate any necessary improvements.
- RE-5** SDREN and SDG&E will maintain ongoing transparency to share pipeline/enrolled customers and avoid duplication of efforts. SDREN and SDG&E determined developing and sharing lists monthly is appropriate. Data sharing protocols will be leveraged where necessary. Sharing enrollees or participants will ensure coordination and help maximize customer participation.
- RE-6** SDREN and SDG&E will share information about customer targets. This will require some trial-and-error between the PAs and will be an evolving process. The goal of this is to avoid customer confusion and help with marketing efforts.

## **C. Cross-Cutting Workforce Education & Training**

SDREN will offer two new Workforce Education and Training (WE&T) programs anticipated to launch in 2025:

- The **Energy Pathways Program** is a market support program focused on serving DACs, HTR, historically underserved communities, and Title I high school students to provide access to STEAM educational opportunities. The program will provide wrap-around services and connect high school students to no-cost educational resources, paid internship opportunities, and professional networks. Program participants will access a network of diverse energy/green professionals to act as coaches and mentors, provide guidance, and encourage them to pursue careers in energy.
- The **Workforce Training and Capacity Building program** is a market support program offering workers in HTR and underserved communities with wrap-around services, access to no cost education and certifications, and connection to on-the-job training opportunities. The program will enhance the clean energy workforce in the San Diego region, focusing on skill development for individuals interested in entering the green workforce and incumbent workers. The program will target individuals, employees/employers, boosting skills and employer capacity to work on electrification and decarbonization projects.

During 2024-2025, the region's IOU WE&T offerings include one regional program administered by SDG&E, two WE&T statewide programs administered by other lead IOUs, and one residential sector statewide program administered by SDG&E that may require coordination across sectors.

The regional program includes the **San Diego LEARN Program** which offers free EE and electrification courses that prioritize interactive learning while giving participants access to certifications and resources such as career maps.

The statewide programs are the WE&T Career Connections, WE&T Career Workforce Readiness program – Energize Careers program, and the residential sector HVAC Quality Installation/Quality Maintenance (QI/QM) program listed out in more detail below.

- **WE&T Career Connections – Energy is Everything** is a statewide market support program administered by PG&E and provides standards-aligned, K-12 STEM, energy and environmental-focused curriculum and lesson supplies to educators statewide at no cost. The program also offers high school internships focused on energy and water audits to help students gain relevant industry skills.
- **WE&T Career Workforce Readiness - Energize Careers** is a statewide equity program administered by PG&E that provides services to support disadvantaged workers through technical training, job placement, and wrap-around service support.
- **HVAC Quality Installation/Quality Maintenance (QI/QM)** is a statewide Residential Sector equity program administered by SDG&E that provides incentives to California contractors dedicated to quality installation, maintenance, and advancing energy efficient technologies.

### Cross-Cutting Workforce Education & Training Sector Coordination Meetings

SDREN and SDG&E have agreed to hold monthly 60-minute cross-cutting WE&T sector coordination meetings upon SDREN authorization with the option to revisit meeting frequency on a quarterly basis. The purpose of the WE&T sector coordination meetings will be to discuss coordination activities for WE&T sector programs. Additional targeted cross-cutting WE&T sector meetings may be warranted and can be coordinated on an ad-hoc basis.

### Data Sharing Protocols

The cross-cutting WE&T program offerings will not involve the use of transfer of customer data between SDREN and SDG&E. If customer data is needed, SDREN and SDG&E will discuss at future cross-cutting WE&T sector coordination meetings.

### Prior Participation

SDREN will incorporate into its process a prior participation survey to understand what WE&T programs a customer has participated in or is currently participating in. This will aid in assessing if there is a program overlap with a statewide offering and avoid duplicative efforts. Prior participation in SDG&E's WE&T programs will not prohibit participation in SDREN programs.

Similarly, prior participation in an SDREN WE&T program will not prohibit participation in the San Diego LEARN platform.

### Customer/Project Referral

The SDREN-SDG&E Cross-Cutting WE&T Sector Coordination Protocols document will include a decision tree diagram detailing steps for referrals to clearly break down the different paths of action available based on customer eligibility and interest. Specifically, this document will outline paths available for employers who are eligible for both the SDREN Workforce Training & Capacity Building program and SDG&E's QI/QM program.

### Customer Confusion and Double-Dipping Mitigation Tactics

SDREN's and SDG&E's WE&T program offerings are distinct and are not anticipated to cause issues related to double-dipping. SDREN and SDG&E outlined the plan below for transparent communication and coordination to avoid customer confusion.

- W1.** SDREN will coordinate with statewide offerings on services, shared partnerships, internships, and/or job opportunities for program participants.
- W2.** SDREN's Workforce Training and Capacity Building program will leverage SDG&E's regional program and/or statewide programs and direct participants to available certifications and resources when applicable.
- W3.** SDREN and SDG&E will jointly develop a Cross-Cutting WE&T Sector Coordination Protocols document leveraging best practices from other PAs to outline a streamlined decision tree process flow. This document will be finalized upon onboarding SDREN's third-party implementers and will be revisited at least once quarterly by SDREN and SDG&E to incorporate any necessary improvements.

## D. Commercial

SDREN will offer three new commercial sector programs anticipated to launch in 2025:

- The **Small Medium Business (SMB) Energy Coach** program is an equity program targeting small and medium sized commercial customers with the objective to raise awareness and increase the adoption of EE practices and measures. The program will connect a dedicated energy coach to each participating SMB to educate them on the value of EE and IDSM, provide facility

benchmarking and EE opportunity assessments, support access to funding and financing, offer technical assistance, and install EE measures at no cost to program participants.

- The **Efficient Refrigeration** program is an equity program designed to serve small corner stores/grocers/small businesses by providing EE education and no-cost, direct install of efficient refrigeration equipment. The program will provide technical assistance to identify refrigerators that are eligible for replacement with high efficiency units. This program will also leverage other programs and resources to provide one-on-one education on sourcing California-grown produce and product placement/promotion to encourage customers to make healthy purchases.
- The **Market Access Program (MAP)** is a resource acquisition program targeting SMBs, with a focus on HTR and underserved businesses. The program will provide performance-based incentives to project developers (aggregators) who deliver projects that realize peak demand reductions and verified energy savings. The program will utilize a measure-flexible population normalized metered energy consumption (NMEC) approach to verify savings while paying incentives based on total system benefit (TSB) achieved, encouraging long-life measures that deliver maximum grid benefit.

During 2024-2025, SDG&E's commercial sector programs include ten regional programs administered by SDG&E, and four statewide programs, one administered by SDG&E and the other three by other lead IOUs. The regional programs include eight resource acquisition programs, one market support, and one equity program, as listed in greater detail below.

- The **Business Energy Solutions (BES)** is a resource acquisition direct install program available to public K-12 schools that offers EE upgrades to participants at no cost. The program provides free energy audits and customized recommendations for energy-saving improvements. The program's authorized contractor works with participants to audit the site, identify available upgrades, and install the new equipment. This program is intended to close once the SDREN Climate Resilience Leadership (public sector) program launches serving K-12 school districts.<sup>6</sup>
- **Market Access Program (CORE-MAP)** is a resource acquisition program offered to both residential and commercial customers. This program is a modified version of SDG&E's Summer Reliability Market Access Program that allows SDG&E to continue offering MAP participation while SDG&E completes the Third-Party Market Access Program solicitation, which is set to end mid-2025, at which point Third-Party MAP would take CORE-MAP's place.
- The **Comprehensive Energy Management Solutions (CEMS)** is a resource acquisition program that helps large commercial customers offset the cost of installing new, more efficient equipment with cash incentives for eligible upgrades. This program is expected to close on 12/31/2024, subject to CPUC staff disposition of Advice Letter 4513-E/3340, and SDG&E is replacing the program with four targeted resource acquisition commercial programs, which include:
  - **Retail, Office, and Wholesale (ROW)**
  - **Groceries, Restaurants, and Food Storage (GRFS)**
  - **Lodging (Hotels/Motels)**
  - **Private Institutions and Healthcare (PIH)**

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<sup>6</sup> SDG&E had intended to close the BES Program at the end of 2023 due to the launch of its new Small Business Equity Program (Small Business Saver Program) at the start of 2024. However, due to the early termination of the K-12 Energy Efficiency Program (KEEP), SDG&E plans to keep the program active to serve the K-12 customer base. Instead of issuing a new solicitation for their K-12 EE program, SDG&E will continue to offer the BES program until the launch of the SDREN Climate Resilience Leadership program, which will serve K-12 school districts.

- The Small Business Outreach Program, known as the **Small Business Saver Program**, is an equity program that serves micro and small business (SB) customers located within DACs and/or are considered HTR. The program aims to deliver energy bill savings through customer outreach through local partnerships, and will offer services such as energy education, bill analysis, free direct install measures, and information about other EE and demand response programs.
- The **Non-Residential Behavioral** market support program will maximize savings through personalized, dynamic communications serving small business customers. Medium business customers may be considered. This program aims to modify customer's usage-based and equipment-based behaviors in ways that reduce energy use.

The statewide programs include Comfortably California, a statewide commercial and residential program administered by SDG&E as well as the CA Food Service Instant Rebate Program and the Statewide Midstream Water Heating Program administered by other lead IOUs. Additionally, the CEDA all-electric and mixed fuel statewide program serves not only commercial, but public, multifamily, industrial, and agricultural projects and is administered by another IOU. These programs are listed out in more detail below.

- **Comfortably California** is an upstream and midstream Residential Sector program that offers incentives for heating, ventilation and air conditioning (HVAC) measures.
- The **CA Food Service Instant Rebate Program** offers instant rebates for qualifying equipment installed at non-residential sites.
- The **Statewide Midstream Water Heating Program** helps business owners and building managers purchase high-efficiency commercial water heating products at reduced prices and contracts build lower-cost equipment into their bids.
- The **California Energy Design Assistance Program (CEDA)** is a resource acquisition program, promotes the electrification and decarbonization of new building construction or major renovation offering energy design assistance and incentives.

Once the SDREN Climate Resilience Leadership (public sector) program launches serving K-12 school districts and upon closure of the BES program, a total of nine regional programs and four statewide programs will be available to commercial customers during the JCM period of 2024-2025. A total of three SDREN programs and four SDG&E programs are anticipated to launch in 2025.

### Commercial Sector Coordination Meetings

SDREN and SDG&E have agreed to hold monthly 60-minute commercial sector coordination meetings upon SDREN authorization with the option to revisit meeting frequency on a quarterly basis. The purpose of the commercial sector coordination meetings will be to discuss coordination activities for commercial sector programs. Additional targeted commercial sector coordination meetings may be warranted and can be coordinated on an ad-hoc basis.

### Data Sharing Protocols

D.23-02-002 states that the IOUs will share disaggregated data requested by RENs and third-party implementers and/or their authorized agents within ten days after notifying the requestor that the requestor meets the following requirements:

- A current cyber security review by each IOU supplying confidential information.
- A non-disclosure agreement directly with each IOU supplying confidential information.
- The ability to receive secure data transmissions from the IOU.



- A current contract for the program, either as the program administrator or as prime or subcontractor with a statement of work that requires all the confidential data received.

To facilitate and improve data sharing within the ten-day period SDG&E sought cost recovery to fund data sharing infrastructure, in AL 4214-E/3191-G, which is pending approval.

SDREN will determine any necessary customer account or PII data needed for SDREN program implementation and SDREN and/or its implementers will go through the SDG&E Privacy Green Light process for authorization to receive confidential information. SDG&E will provide requested data within the required timeframe (10 days) to support SDREN project timelines. SDG&E will notify SDREN within a reasonable amount of time before the due date if an extension is necessary. SDREN and SDG&E anticipate that data requests and data sharing protocols will be ongoing agenda topics in future sector meetings, particularly once SDREN onboards its third-party implementers and as SDG&E builds out the self-service data sharing platform contemplated in AL 4214-E/3191-G, if approved.

### **Prior Participation**

During 2024-2025, once SDREN launches its commercial sector programs and begins enrolling customers, SDREN will determine a customer's prior participation by submitting a recurring monthly data request to SDG&E after being approved via SDG&E's Privacy Green Light process. This will aid in understanding what EE programs a customer has participated in or is currently participating in and what measures the customer has received. This process to determine prior participation will be documented in the SDREN-SDG&E Commercial Sector Coordination Protocols document to be developed and maintained by SDREN and SDG&E in future commercial sector coordination meetings upon onboarding SDREN's third-party implementer(s) and will be revisited quarterly, at a minimum, and will be updated as determined by SDREN and SDG&E.

### **Customer/Project Referral**

The SDREN-SDG&E Commercial Sector Coordination Protocols document will include a decision tree diagram to clearly break down the different paths of action available based on customer eligibility and interest.

### **Customer Confusion and Double-Dipping Mitigation Tactics**

SDREN and SDG&E outlined the plan below for transparent communication and coordination to prevent duplication of efforts. This transparency between PAs regarding outreach and enrollment will help mitigate customer confusion and avoid double-dipping within the commercial sector. Additional mitigation tactics may be identified in the monthly commercial sector meetings.

- CS-1** SDREN and SDG&E will jointly develop a Commercial Sector Coordination Protocols document to outline a streamlined decision tree process flow. This document will be finalized upon onboarding SDREN's third-party implementers and will be revisited at least once quarterly by SDREN and SDG&E to incorporate any necessary improvements.
- CS-2** SDREN's SMB Energy Coach program will refer program participants to the statewide Comfortably California program and the CA Food Service Instant Rebate Program, as applicable.

- CS-3** SDREN’s Efficient Refrigeration program serving small corner stores/grocers/small businesses will coordinate with SDG&E’s forthcoming resource acquisition program targeting grocery stores, restaurants and food storage facilities.
- CS-4** SDG&E’s Small Business Saver Program will provide customers information on available EE programs including information about SDREN programs.
- CS-5** SDREN and SDG&E will maintain ongoing transparency to share pipeline/enrolled customers and avoid duplication of efforts, discuss coordination, and help maximize participation. SDREN and SDG&E determined developing and sharing lists monthly is appropriate. Data sharing protocols will be leveraged as necessary.
- CS-6** SDREN and SDG&E will share information about customer targets with each other. This will require some trial-and-error between the PAs and will be an evolving process. The goal of this is to avoid customer confusion and help with marketing a joint customer messaging strategy.

## E. Cross-Cutting Codes and Standards

SDREN will offer one new C&S program anticipated to launch in 2025. The Codes and Standards program is designed to improve compliance with existing codes and standards, help local governments develop ordinances that exceed statewide minimum requirements and coordinate with other programs and entities to support the state’s policy goals. The program will prioritize smaller and rural permitting agencies that face more capacity and resource constraints than their larger counterparts to ensure they can access tools and knowledge to overcome these constraints. The program offers technical assistance, education and training, tools and resources through an energy code coach which includes conducting a needs assessment to identify C&S compliance gaps and barriers.

During 2024-2025, SDG&E’s C&S program offerings include three regional subprograms and three statewide subprograms, led by another lead IOU, including:

- The **Compliance Enhancement Subprogram** which assists with improving compliance for both the Building Energy Code (Title 24, Part 6), and California’s Appliance Standards (Title 20). The program targets markets throughout the compliance supply chain by providing needs-based research, strategic planning, tools, training, resources, videos, and outreach to all market actors.
- The **Reach Codes Subprogram** that focuses primarily on developing and/or supporting the development and implementation of reach codes or locally adopted ordinances that exceed statewide minimum requirements and CALGreen Codes (Title 24 – Part 11). Reach Codes and CALGreen Code (Tier 1/Tier 2) are typically codes adopted by local governments.
- The **Planning & Coordination Subprogram** works with the California Energy Commission (CEC), CPUC, key market actors, emerging technologies, and voluntary programs to create a strategic approach for the development of key measures and technologies in support of building EE, electrification, ZNE, GHG reduction, alternative fuel vehicles, grid flexibility and sustainability, indoor air quality, and equity. This subprogram also works with other programs and market actors to improve code compliance by delivering education, conducting outreach, and soliciting additional input on future code development and code compliance proposals from impacted industries.
- The **Statewide National Appliance Standards Advocacy, Statewide Title 20 Appliance Standards Advocacy, and Statewide Title 24 Building Codes Advocacy** subprograms reduce building and appliance energy use and associated GHG emissions through the advancement of test procedures, building codes, and appliance standards. These advocacy Subprograms achieve



energy and demand savings goals on behalf of ratepayers by influencing continuous updates in EE regulations by working directly with the CEC, U.S. Dept. of Energy (DOE), U.S. Environmental Protection Agency (EPA), and other significant code-setting bodies.

### **Cross-Cutting Codes and Standards Coordination Meetings**

SDREN and SDG&E have agreed to hold monthly 60-minute C&S coordination meetings upon SDREN authorization with the option to revisit meeting frequency on a quarterly basis. The purpose of the C&S coordination meetings will be to discuss coordination activities for the C&S programs. Additional targeted C&S meetings may be warranted and will be coordinated on an ad-hoc basis.

### **Data Sharing Protocols**

The cross-cutting C&S program offerings will not involve the use of customer data transfers between SDREN and SDG&E. If such needs arise, SDREN and SDG&E will discuss at future sector C&S coordination meetings.

### **Prior Participation**

SDREN will incorporate into its process a prior participation survey to understand what C&S programs customers have participated in or are currently participating in. This will aid in avoiding duplicative efforts. Prior participation in SDG&E's C&S programs will not prohibit participation in SDREN programs. Similarly, prior participation in an SDREN C&S program will not prohibit participation in the SDG&E programs.

### **Customer/Project Referral**

During the C&S coordination meetings, SDREN and SDG&E will work to ensure a well-coordinated and comprehensive set of C&S program offerings, policy strategies and compliance solutions. As part of this effort, SDREN and SDG&E will also work together on marketing and outreach efforts and customer referral strategies. Both the proposed SDREN C&S program and the SDG&E local C&S program will strive to offer a comprehensive set of strategies to effectively address current and anticipated C&S policy drivers and increase compliance support for permitting agencies and permit applicants. The SDREN-SDG&E Cross-cutting C&S Sector Coordination Protocols document will discuss a collaborative process in working together to achieve common C&S goals at the state and local level, including supporting customer referrals to the appropriate programs.

### **Customer Confusion and Double-Dipping Mitigation Tactics**

SDREN's and SDG&E's C&S program offerings are distinct and are not anticipated to cause issues related to double-dipping. However, SDREN and SDG&E outlined the plan below for transparent communication and coordination.

**C-1** SDREN will coordinate with statewide offerings on services, tools, and resources for program participants.

**C-2** SDREN and SDG&E will share enrollees and participant information to ensure that the programs are coordinating and to help maximize customer participation.

**C-3** SDREN and SDG&E will jointly develop a Cross-cutting C&S Sector Coordination Protocols document leveraging best practices from other PAs to outline a streamlined decision tree process flow. This document will be finalized upon onboarding SDREN's third-party

implementers and will be revisited at least quarterly by SDREN and SDG&E to incorporate any necessary improvements.

## **F. Statewide Programs**

As outlined in each of the specific sector sections above, there are a total of 12 statewide programs across public, residential, commercial, cross-cutting WE&T and C&S sectors, of which three are led by SDG&E.<sup>7</sup> As statewide programs have a footprint beyond the SDREN and SDG&E territories, it is important for SDREN and SDG&E to coordinate not just with each other, but with all statewide programs, inclusive of those administered by other PAs. As described in applicable sector specific sections, SDREN programs aim to leverage SDG&E and statewide program offerings to maximize benefits to customers and prevent overlap and refer customers to statewide programs where appropriate.

### **Statewide Programs Meetings**

SDREN and SDG&E will conduct meetings with statewide PA leads as necessary to ensure that lessons learned are shared and that duplicative efforts are avoided. Upon new program launches, SDREN will reach out to statewide PA leads to schedule a meeting and introduce their program offerings and clarify any necessary coordination activities. Each PA will determine whether ongoing meetings are necessary or if they can be called on an ad-hoc basis.

### **Data Sharing Protocols**

During the initial coordination meeting, SDREN and SDG&E will determine and agree upon what, if any, data sharing protocols are necessary.

### **Prior Participation**

SDREN and SDG&E will incorporate into their processes a structure to understand what EE programs a customer has participated in or is currently participating in. This will aid in assessing if there is program overlap and avoid duplicative efforts.

### **Presenting Available Programs**

SDREN intends to present available statewide programs based on customer needs and applicability to each customer.

### **Customer/Project Referral**

As described in the Customer Referral section above, a customer referral process will be documented in sector or program specific customer project and referral tree process flows. SDREN and SDG&E will include statewide program referral processes, where applicable, for each sector.

### **Customer Confusion and Double-Dipping Mitigation Tactics**

Through the statewide coordination meetings, SDREN and SDG&E will discuss coordination and customer targeting to mitigate customer confusion and double dipping.

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<sup>7</sup> SDG&E submitted AL 4494-E/3332-G, which requests authorization to change the statewide lead program administrator for two programs for which SDG&E's is the statewide lead. The AL is pending disposition.

## APPENDIX A: Regulatory Guidance

D.18-05-041 requires EE PAs with overlapping service areas to submit a JCM to coordinate program activities. The dicta of the Decision states that JCMs “...must demonstrate how they [PAs] will avoid or minimize duplication for programs that address a common sector (e.g., residential or commercial) but pursue different activities, pilots that are intended to test new or different delivery models for scalability, and/or programs that otherwise exhibit a high likelihood of overlap or duplication and are not targeted at hard-to-reach customers. For such programs, each PA must explicitly identify and discuss how its activities are complementary and not duplicative of other PAs’ planned activities.”<sup>8</sup>

In D.23-06-055 the CPUC established additional JCM requirements. Ordering Paragraph (OP) 35 “...supersedes Decision (D.) 18-05-041 and D.21-05-031 with respect to the timing and submission of Joint Cooperation Memoranda (JCM). Portfolio administrators must submit JCMs every two years, within 60 days after Commission approval of the last of each JCM’s PA’s true-up advice letters and mid-cycle advice letters (as applicable), to the California Energy Data and Reporting System, with notice to the service list of Rulemaking 13-11-005 or a successor proceeding.” Ordering Paragraph 3 of Decision 24-08-003 (Decision Addressing Motion for Authorization of San Diego Regional Energy Network) states, “San Diego Regional Energy Network must submit a joint cooperation memo with San Diego Gas & Electric Company to the California Energy Data and Reporting System, with notice to the service list, within 90 days of the issuance date of this decision.” D. 24-08-003 was issued on August 7, 2024; accordingly, this Joint Cooperation Memo was submitted by November 5, 2024. As the lead PA for SDREN, San Diego Community Power developed this document in partnership with SDG&E.

In addition to the change in submission cadence, OP 34 in D.23-06-055 also made additional requirements for RENs. “Bay Area Regional Energy Network, Southern California Regional Energy Network, Tri-County Regional Energy Network, and Rural Regional Energy Network shall, for programs that only meet the criterion of serving hard-to-reach customers, include in their Joint Cooperation Memoranda a description of how they will target (i.e., market and conduct outreach to) and to primarily serve hard-to-reach customers or specific hard-to-reach customer segments.”<sup>9</sup>

Finally, OP 33 of D.23-06-055 states “Investor-owned utility (IOU) portfolio administrators must convey information to third-party bidders during the solicitation process, for buildings that have a potential to be served by both IOUs’ third-party implementers and regional energy networks (RENs), about RENs’ efforts to identify hard-to-reach customers or buildings to target for marketing of REN programs.”<sup>10</sup>

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<sup>8</sup> D.18-05-041 at 97.

<sup>9</sup> D.23-06-055 at 137.

<sup>10</sup> *Id.* at 130.

## **APPENDIX B: SD JCM Program Matrix**



JCM KEY	PA	Program ID	Program Name	Sector	Segment	2024-2027 Budget	Target Audience	Resource/Non-Resource	Other Program Differentiators	Lighting	Appliances	HVAC	Plug Load	Refrigeration	Custom Controls	Lighting Controls	HVAC Controls	Whole Building	Water Heating	Other
IOU	SDGE-SW	SDGE_SW_PLA	Golden State Rebates	Res	Resource Acquisition	\$ 3,846,265.00	Res	Resource	NA			X	X	X						X
IOU	SDGE-SW	SDGE_SW_HVAC_Up_Com	Comfortably California	Com	Resource Acquisition	\$ 4,669,841.00	Com	Resource	NA			X								
IOU	SDGE-SW	SDGE_SW_HVAC_Up_Res	Comfortably California	Res	Resource Acquisition	\$ 1,120,134.00	Res	Resource	NA			X								
IOU	SDGE-SW	SDGE_SW_IP_Colleges	Higher Education Energy Efficiency (HEEP) program	Pub	Resource Acquisition	\$ 1,498,377.00	Pub	Resource	NA			X								
IOU	SDGE-SW	SDGE_SW_CSA_Natl	SW Codes & Standards Advocacy - National Codes & Standards Advocacy	C&S	C&S	\$ 2,841,601.00	C&S	Resource	NA											
IOU	SDGE-SW	SDGE_SW_CSA_Natl (Utility)	SW Codes & Standards Advocacy - National Codes & Standards Advocacy (Utility)	C&S	C&S	\$ 322,386.00	C&S	Resource	NA											
IOU	SDGE-SW	SDGE_SW_CSA_Appl	SW Codes & Standards Advocacy - State Appliance Standards	C&S	C&S	\$ 1,869,738.00	C&S	Resource	NA											
IOU	SDGE-SW	SDGE_SW_CSA_Appl (Utility)	SW Codes & Standards Advocacy - State Appliance Standards (Utility)	C&S	C&S	\$ 329,726.00	C&S	Resource	NA											
IOU	SDGE-SW	SDGE_SW_CSA_Bldg	SW Codes & Standards Advocacy - State Building Codes	C&S	C&S	\$ 5,053,288.00	C&S	Resource	NA											
IOU	SDGE-SW	SDGE_SW_CSA_Bldg (Utility)	SW Codes & Standards Advocacy - State Building Codes (Utility)	C&S	C&S	\$ 473,336.00	C&S	Resource	NA											
IOU	SDGE-SW	SDGE_SW_ETP_Elec	SW Emerging Technologies - Electric	ET	Market Support	\$ 6,507,496.00	Res & Non-Res	Non-Resource	NA											
IOU	SDGE-SW	SDGE_SW_IP_Gov	SW Institutional Partnerships, DGS & DoC	Pub	Resource Acquisition	\$ 1,453,785.00	Pub	Resource	NA											
IOU	SDGE-SW	SDGE_SW_MCVH	SW Midstream Commercial Water Heating	Com	Resource Acquisition	\$ 6,936,000.00	Com	Resource	NA											
IOU	SDGE-SW	SDGE_SW_FS	CA Food Service Instant Rebate Program	Res	Resource Acquisition	\$ 8,323,200.00	Res	Resource	NA											
IOU	SDGE-SW	SDGE_SW_WP	SW Downstream Water/Wastewater Pumping Program	Pub	Resource Acquisition	\$ 1,249,797.00	Pub	Resource	NA											
IOU	SDGE-SW	SDGE_SW_ETP_Gas	SW Emerging Technologies - Gas	ET	Market Support	\$ 1,384,000.00	Res & Non-Res	Non-Resource	NA											
IOU	SDGE-SW	SDGE_SW_NC_NonRes_Com_mixed	California Energy Design Assistance (CEDA) mixed fuel program - Com	Com	Resource Acquisition	\$ 713,056.00	Com	Resource	NA											
IOU	SDGE-SW	SDGE_SW_NC_NonRes_Pub_mixed	California Energy Design Assistance (CEDA) mixed fuel program - Public	Pub	Resource Acquisition	\$ 284,939.00	Pub	Resource	NA											
IOU	SDGE-SW	SDGE_SW_NC_NonRes_Res_mixed	California Energy Design Assistance (CEDA) mixed fuel program - Res	Res	Resource Acquisition	\$ 1,245,018.00	Res	Resource	NA											
IOU	SDGE-SW	SDGE_SW_NC_NonRes_Com_electric	California Energy Design Assistance (CEDA) all-electric fuel program - Com	Com	Resource Acquisition	\$ 1,080,952.00	Com	Resource	NA											
IOU	SDGE-SW	SDGE_SW_NC_NonRes_Pub_electric	California Energy Design Assistance (CEDA) all-electric fuel program - Public	Pub	Resource Acquisition	\$ 2,396,752.00	Pub	Resource	NA											
IOU	SDGE-SW	SDGE_SW_NC_NonRes_Res_electric	California Energy Design Assistance (CEDA) all-electric fuel program - Res	Res	Resource Acquisition	\$ 1,713,524.00	Res	Resource	NA											
IOU	SDGE	SDGE3206	Business Energy Solutions (RES)	Com	Resource Acquisition	\$ 2,438,986.00	Com	Resource	NA											
IOU	SDGE	SDGE3251	SW C&S - Compliance Enhancement	C&S	C&S	\$ 3,988,949.00	C&S	Non-Resource	NA											
IOU	SDGE	SDGE3252	SW C&S - Reach Codes	C&S	C&S	\$ 1,520,517.00	C&S	Non-Resource	NA											
IOU	SDGE	SDGE3253	SW C&S - Planning & Coordination	C&S	C&S	\$ 2,091,081.00	C&S	Non-Resource	NA											
IOU	SDGE	SDGE4002	Residential Zero Net Energy Transformation (RZNET)	Res	Resource Acquisition	\$ 17,600,001.00	Res	Resource	NA											
IOU	SDGE	SDGE4001	Residential Energy Solutions (RES)	Res	Resource Acquisition	\$ 5,999,999.00	Res	Resource	NA											
IOU	SDGE	SDGE4004	Comprehensive Energy Management Solutions (CEMS)	Com	Resource Acquisition	\$ 5,862,296.00	Com	Resource	NA											
IOU	SDGE	SDGE4010	Climate Action Plan for Zero Net Energy Program (CAP4ZNE)	Pub	Resource Acquisition	\$ 10,297,678.00	Pub	Resource	NA											
IOU	SDGE	SDGE4012	SD EnergyLink/Federal Energy Program	Pub	Resource Acquisition	\$ 16,188,338.00	Pub	Resource	NA											
IOU	SDGE	SDGE4040	Home Energy & Audits (HEAR) Program	Res	Resource Acquisition	\$ 17,882,394.00	Res	Resource	NA											
IOU	SDGE	SDGE4168	Lodging (Hotels/Motels)	Com	Resource Acquisition	\$ 1,638,661.00	Com	Resource	NA											
IOU	SDGE	SDGE4169	Groceries, Restaurants and Food Storage	Com	Resource Acquisition	\$ 5,534,067.00	Com	Resource	NA											
IOU	SDGE	SDGE4170	Retail Office, and Wholesale	Com	Resource Acquisition	\$ 14,367,738.00	Com	Resource	NA											
IOU	SDGE	SDGE4171	Private Institutions and Healthcare	Com	Resource Acquisition	\$ 4,103,098.00	Com	Resource	NA											
IOU	SDGE	SDGE4197TP	Market Access Program - Residential	Res	Resource Acquisition	\$ 2,369,942.00	Res	Resource	NA											
IOU	SDGE	SDGE4198TP	Market Access Program - Commercial	Com	Resource Acquisition	\$ 5,599,517.00	Com	Resource	NA											
IOU	SDGE	SDGE4197	CORE - Market Access Program - Residential	Res	Resource Acquisition	\$ 1,086,546.00	Res	Resource	NA											
IOU	SDGE	SDGE4198	CORE - Market Access Program - Commercial	Com	Resource Acquisition	\$ 2,252,496.00	Com	Resource	NA											
IOU	SDGE	SDGE4173	Small Business Outreach Program	Com	Equity	\$ 11,632,022.00	Com	Non-Resource	NA											
IOU	SDGE	SDGE4174	LEARN Program	Cross Cutting	Market Support	\$ 10,835,020.00	Cross Cutting	Non-Resource	NA											
IOU	SDGE	SDGE4176	Residential Equity Education and Outreach Program	Res	Equity	\$ 3,400,000.00	Res	Non-Resource	NA											
IOU	SDGE	SDGE4136	Statewide Residential HVAC QI/QM	Res	Market Support	\$ 3,002,405.00	Res	Non-Resource	NA											
IOU	SDGE	SDGE4175	Customer Home Electrification Readiness Program	Res	Market Support	\$ 3,669,752.00	Res	Non-Resource	NA											
REN	SDREN	SDREN-01-WET-EPP	Energy Pathways Program	CC-WET	Market Support	\$ 7,323,955.00	High school students	Non-Resource	Program will target high school students in DACs/HTR to promote program equity and skill development opportunities in areas with fewer opportunities. Will partner with other local W&ET programs to leverage non-EE funding for non-EE activities, 1:1 coaching and direct connections with local employers with paid internships to support with career pipeline.											
REN	SDREN	SDREN-02-WET-BRC	Workforce Training & Capacity Building	CC-WET	Market Support	\$ 11,901,470.00	Adult workforce, and employees	Non-Resource	Work with local employers to determine the emerging industry careers and necessary skills for incoming professionals to be successful in the industry. Work directly with employers and incentivize them to promote and offer professional development and training. Deliver training in partnership with local agencies through network connection sites and standardized content.											
REN	SDREN	SDREN-02-RES-SFM	Single Family	Res	Equity	\$ 22,764,000.00	Detached, renter or lower-occupied single-family residences	Resource	Offer EE measures that are not covered through existing programs. Concierge-type services working with contractors and connections to other programs and services (IRA, etc.). Work with trusted advisors and in-language to engage with customers. Focus on EE offerings and education that will reduce costs and increase other non-energy benefits. Support equity communities with early decarbonization efforts.	x	x	x					x		x	x
REN	SDREN	SDREN-01-RES-MFM	Multifamily	Res	Equity	\$ 12,141,000.00	Multifamily buildings of two or more units.	Resource	Offer EE measures and serve buildings not covered (or only partially covered) through existing programs. Equity program with focus on delivery to HTR customers, offering in-language outreach and anti-displacement policies. Renter-specific offerings, including direct install upgrades and education, with a focus on non-energy benefits. Support customers to leverage external funding/financing as much as possible, including stacking of incentives when possible.	x	x	x					x		x	x
REN	SDREN	SDREN-01-PUB-CRL	Climate Resilience Leadership	Pub	Market Support	\$ 21,418,605.00	Eligible public agency types: Cities, County, Public education agencies, Special districts, Tribes	Resource	As a market support program the primary goal is to build capacity for public agency participants through education, training, and technical services and instill EE and demand management as a best practice. Offer EE measures and serve facilities (and agencies) not covered through existing programs, with a focus on electrification measures. Offer procurement and construction phase project support. Support strategic energy resilience planning (DSM). Support access to funding and financing (IDSM).	x		x				x	x		x	x
REN	SDREN	SDREN-02-PUB-TRE	Tribal Engagement	Pub	Equity	\$ 1,831,406.00	Tribes	Non-Resource	No current EE offerings are designed to engage Tribal nations specifically and their unique challenges.											
REN	SDREN	SDREN-01-COM-SMB	SMB Energy Coach	Com	Equity	\$ 10,986,767.00	Small/Medium Businesses	Resource	Conduct an assessment (once authorized) to fill service gaps in the territory. Intended to fill geographic and service gaps, to not overlap, and only to complement SDG&E equity offering. Support with access to other offerings and programs, including IDSM services.	x	x	x	x	x		x	x		x	
REN	SDREN	SDREN-02-COM-ERF	Efficient Refrigeration	Com	Equity	\$ 7,323,955.00	Micro, small, and medium businesses, focusing on small local grocery stores, corner stores, and local small businesses that sell food products.	Resource	Equity offering to target small local grocery stores, corner stores, and local small businesses that sell food products with DI measures not offered by other programs.						x					
REN	SDREN	SDREN-03-COM-MAP	Market Access Program	Com	Resource Acquisition	\$ 16,479,316.00	Small/Medium Businesses	Resource	Program offering performance-based incentives to project developers (aggregators) who deliver projects that realize peak demand reduction and verified energy savings, utilizing a population NMEC methodology to verify savings while paying incentives based on TSB. Work with local trusted entities for customer engagement with a focus on HTR and underserved businesses.	x		x		x		x	x	x		x
REN	SDREN	SDREN-01-CS-CSS	Codes & Standards	CC-C&S	C&S	\$ 7,323,955.00	City and County permitting authorities	Non-Resource	Conduct needs assessment and work with permitting agencies to identify gaps. Focus on facilitating, supporting, and accelerating the shift to building and transportation electrification with permitting agencies as well as with the C&S community. This will include the adoption of new regulations and approaches to review and approval of new technologies and electrical service requirements, with particular focus on "replace on burnout" opportunities. Provide support in developing local building performance standards and benchmarking approaches, including the evolution to grid-interactive buildings. SDG&E does not have access to permit technicians. This is an opportunity for SDREN. Focused on the existing building market.											
IOU	SCE-SW	SCE_SW_PLA	Plug Load and Appliance	Res		\$ 19,289,484.58	Residential statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource			Yes		Yes							
IOU	SCE-SW	SCE_SW_NC_NonRes_Res_electric	SW Non Res Res New Construction	Res		\$ 11,710,338.68	Residential statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource										Yes		
IOU	SCE-SW	SCE_SW_NC_NonRes_Res_mixed	SW Non Res Res Mixed New Construction	Res		\$ 6,243,914.53	Residential statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource										Yes		
IOU	SCE-SW	SCE_SW_NC_Res_electric	SW Res New Construction	Res		\$ 33,013,844.90	Residential statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource							Yes			Yes		
IOU	SCE-SW	SCE_SW_HVAC_QI/QM	Res HVAC QI/QM	Res		\$ 15,057,422.35	Residential statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource				Yes					Yes			
IOU	SCE-SW	SCE_SW_HVAC_Up_Res	Upstream HVAC (Res)	Res		\$ 5,617,607.31	Residential statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource				Yes					Yes			
IOU	SCE-SW	SCE-13-SW-001A	Energy Advisor Program (Summary Reliability)	Res		\$ 34,096,508.00	Residential statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource											Yes	
IOU	SCE-SW	SCE-13-SW-007A1	On-Bill Financing Loan Pool (non-residential)	CC Fin		\$ 36,500,000.00	Cross Cutting - Finance statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Non-Resource												
IOU	SCE-SW	SCE-13-SW-007A	On-Bill Financing (OBF)	CC Fin		\$ 5,234,764.00	Cross Cutting - Finance (Public & Ag - SoCalREN) statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Non-Resource												
IOU	SCE-SW	SCE_SW_FS	Food Service POS	Comm		\$ 17,913,600.04	Commercial statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource			Yes		Yes	Yes	Yes					Yes
IOU	SCE-SW	SCE_SW_HVAC_Up_Com	SW HVAC Upstream Commercial	Comm		\$ 23,419,817.18	Commercial statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource				Yes								
IOU	SCE-SW	SCE_SW_MCVH	Midstream Comm Water Heating	Comm		\$ 14,928,000.24	Commercial statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource			Yes			Yes					Yes	Yes
IOU	SCE-SW	SCE_SW_NC_NonRes_Com_electric	SW New Construction NonRes Com - All Electric	Comm		\$ 7,387,293.90	Commercial statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource										Yes		
IOU	SCE-SW	SCE_SW_NC_NonRes_Com_mixed	SW New Construction NonRes Com - Mixed Fuel	Comm		\$ 3,576,059.80	Commercial statewide program. SCE provides funding to the Lead PA, SCG, for this statewide program.	Resource										Yes		



[illegible]

## **APPENDIX C: SDREN Program Descriptions & Compliance with REN Criteria**

### **Residential Sector:**

#### **SDREN-02-RES-SFM**

#### **Single Family Program**

Creates a concierge-style home energy advisor service, connecting residents to program information, funding and financing opportunities, and offers rebates and incentives.

#### **Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake
- (3) activities serving hard-to-reach markets, whether or not there is another utility or CCA program that may overlap.

#### **SDREN-01-RES-MFM**

#### **Multifamily Program**

Targets multifamily property owners, managers and tenants offering incentives and rebates and customized technical assistance to address facility upgrades that impact both common area measures and renter-specific in-unit utility bill savings.

#### **Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake
- (3) activities serving hard-to-reach markets, whether or not there is another utility or CCA program that may overlap.

### **Commercial Sector:**

#### **SDREN-03-COM-MAP**

#### **Market Access Program**

Provides performance-based incentives to project developers who deliver peak demand reductions and verified energy savings. This program offers customizable services and financial benefits to underserved businesses and delivers EE and electrification upgrades.

#### **Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake
- (3) activities serving hard-to-reach markets, whether or not there is another utility or CCA program that may overlap.

#### **SDREN-02-COM-ERF**

#### **Efficient Refrigeration Program**

Offers EE education and no-cost, direct installation of efficient refrigeration equipment to small businesses, supporting energy cost savings and stocking of healthy, fresh, affordable food products.

#### **Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake

(3) activities serving hard-to-reach markets, whether or not there is another utility or CCA program that may overlap.

**SDREN-01-COM-SMB**

**Small- and Medium-Sized Business Energy Coach**

Engages with small- and medium-sized businesses providing technical assistance and facility benchmarking and EE opportunity assessments, supporting access to available funding and financing, and offering measures at no cost.

**Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake
- (3) activities serving hard-to-reach markets, whether or not there is another utility or CCA program that may overlap.

**Public Sector:**

**SDREN-02-PUB-TRE**

**Tribal Engagement**

Creates a pathway for Tribes and Tribal organizations in the San Diego region to develop and implement energy-related initiatives.

**Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake

**SDREN-01-PUB-CRL**

**Climate Resilience Leadership**

Provides customized guidance and technical services to public agencies for identifying and implementing EE projects.

**Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake

**Cross-Cutting:**

**SDREN-02-WET-BRC**

**Workforce Training and Capacity Building**

Focuses on skill development for new and incumbent workers, aiming to build accessible pathways into the green workforce.

**Compliance with REN Criteria:**

- 1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake
- 2) pilot activities where there is no current utility or CCA program offering, and where there is potential for scalability to a broader geographic reach, if successful.

**SDREN-01-WET-EPP**

**Energy Pathways Program**

Provides high school students with personalized guidance and access to a diverse network of mentors and training resources to develop students' skills and awareness of green career pathways.



**Compliance with REN Criteria:**

1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake

**SDREN-01-CS-CSS**

**Codes and Standards Program**

Supports local government permitting agencies to enhance energy code compliance and embrace advanced energy codes, standards, and policies.

**Compliance with REN Criteria:**

1) activities that investor-owned utility (IOU) or community choice aggregator (CCA) program administrators cannot or do not intend to undertake

2) pilot activities where there is no current utility or CCA program offering, and where there is potential for scalability to a broader geographic reach, if successful.

**APPENDIX D: Optional Program Change Form Template**

<b>PA</b>	
<b>Sector</b>	
<b>Date</b>	
<b>Program</b>	
<b>Summary of Program Change</b>	

**Additional Notes:**

--

## APPENDIX E: Sample Sector Coordination Meeting Agenda/Notes Template

<b>Sector</b>				
<b>Meeting Date</b>				
<b>Meeting Location</b>				
<b>PAs</b>		<b>SDREN</b>		<b>SDG&amp;E</b>
<b>Attendees</b>				

### Agenda:

### Notes:

### Action Items:

1.

SD JCM

2.

3.

4.

5.

## **EXHIBIT E**

### **Description and Map of SDREN Service Territory**

The SDREN service territory is home to 3.3 million people and includes the County of San Diego, 18 incorporated cities, 18 Tribal communities, 16 significant naval and military installations, 47 school districts, and 24 water districts. Public agencies or districts own over 60% of the land in the County. The SDREN territory includes San Diego County, 70 miles of coastline, and shares an international border with Mexico. While the region's coastline is highly developed and populated, there are a significant number of rural and semi-rural communities in the southern and eastern portions of the county. The territory is a microcosm of the state and includes farming and non-farming workforces, with over 100 languages spoken, a large tourism economy accompanied by high cost of living, and the highest energy rates in California.

*Figure 1. SDREN will serve San Diego County, which is bordered by the Pacific Ocean, Orange County, Riverside County, Imperial County, and Mexico.*



# ITEM 12

## ATTACHMENT B

## **RESOLUTION NUMBER 2025-01**

### **A RESOLUTION OF THE BOARD OF DIRECTORS OF SAN DIEGO COMMUNITY POWER AUTHORIZING EXECUTION OF THE SDREN ENERGY EFFICIENCY PROGRAMS AND BUDGET AGREEMENT WITH SAN DIEGO GAS AND ELECTRIC COMPANY (SDG&E); ACCEPTING, APPROPRIATING, AND EXPENDING FUNDS; AND RELATED ACTIONS.**

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

B. On January 5, 2024, Community Power, in partnership with the County of San Diego, submitted the San Diego Regional Energy Network (“SDREN”) Business Plan Application to the California Public Utilities Commission (“CPUC”).

C. On August 1, 2024, the CPUC approved SDREN, providing funding for various program offerings included in SDREN’s Business Plan Application. The approval of a Regional Energy Network in San Diego allows access to funds to administer and implement energy efficiency programs focused on underserved and hard-to-reach residents, businesses, and public agencies in the region.

D. Decision 24-08-003 (Decision Addressing Motion for Authorization of San Diego Regional Energy Network) documents the following:

- (i) Approves the proposal for a San Diego Regional Energy Network and authorized SDREN as a new energy efficiency Portfolio Administrator,
- (ii) Approves SDREN’s proposed energy efficiency portfolio strategic plan, portfolio plan, and budget by authorizing energy efficiency funding in the aggregate amount of \$124,274,206 for the years 2024 through 2027,
- (iii) Appoints SDG&E to serve as the fiscal agent utility for SDREN, and
- (iv) Instructs SDG&E to coordinate administratively with SDREN with respect to the collection and distribution of electric funds supporting SDREN’s activities.

E. Pursuant to section 3.2.9 of its Joint Powers Agreement, Community Power may, at the discretion of the Board, apply for, accept, and receive licenses, permits, grants, loans or other aid from any federal, state or local public agency.

F. Pursuant to Section 4.6.16 of its Joint Powers Agreement, the Board has the responsibility to exercise the Specific Powers identified in Sections 3.2 except those which the Board may elect to delegate to the Chief Executive Officer.

G. The Board, or its designee, is authorized to accept, appropriate, and expend the SDREN funds.

H. The Board, or its designee, is authorized to execute an agreement with SDG&E with respect to the SDREN funds.

I. The Board, or its designee, is authorized to take all necessary actions to administer, monitor, manage and ensure compliance and to negotiate and execute contracts with third parties to implement the agreement or use the funds.

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

1. The Board of Directors has determined that the recitals herein are true and correct.
2. The Board of Directors hereby authorizes the Chief Executive Officer to execute the SDREN Energy Efficiency Programs and Budget Agreement for Years 2024-2027 with SDG&E with respect to the SDREN funds and to negotiate and execute any amendments, extensions, or renewals of the agreement.
3. The Board of Directors hereby authorizes the Chief Executive Officer to accept, appropriate, and expend the SDREN funds in an amount not to exceed \$124,274,206 in the FY 2024-25 Capital Budget and FY 2025-29 Capital Investment Plan.
4. The Board of Directors hereby authorizes the Chief Executive Officer to take all necessary actions to administer, monitor, manage, and ensure compliance with the agreement, and to negotiate and execute contracts with third parties to implement the agreement or use of funds.
5. This resolution shall take effect immediately upon adoption.



**PASSED, APPROVED AND ADOPTED** at a meeting of the Board of Directors of San Diego Community Power held on January 23, 2025.

---

Chair, Board of Directors  
San Diego Community Power

ATTEST:

APPROVED AS TO FORM

---

Maricela Hernandez, Clerk of the Board  
San Diego Community Power

---

Veera Tyagi, General Counsel  
San Diego Community Power



## **SAN DIEGO COMMUNITY POWER Staff Report – Item 13**

---

**To:** Board of Directors

**From:** Byron Vosburg, Chief Commercial Officer  
Morgan Adam, Senior Local Development Manager

**Via:** Karin Burns, Chief Executive Officer

**Subject:** Approval of Power Purchase Agreement Portfolio with Luminia CA DevCo I, LLC

**Date:** January 23, 2025

---

### **RECOMMENDATION**

Approve Power Purchase Agreements and a Framework Agreement, in substantially final forms, for a Local RFO portfolio with Luminia CA DevCo I, LLC, for up to 3.7 MW of rooftop(s) photovoltaic (PV) generation for twenty years and authorize the Chief Executive Officer to execute the agreements.

### **BACKGROUND:**

As Community Power strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) of at least 10 years in duration will become integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that Community Power signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which Community Power can build its power supply portfolio while also providing power supply cost certainty around which Community Power can develop its pro forma financial model.

Supplemental to Community Power's efforts to secure more long-term PPAs, Community Power additionally strives to procure an increasing amount of its power supply from renewable resources that are local to San Diego County and that are smaller, non-utility scale projects, typically interconnected to distribution circuits closer to where Community Power loads are located. One of the ways that Community Power works to meet these local distributed energy resource (DER) procurement goals is through open solicitations, one of which was Community Power's Local Distributed RFO solicitation, which closed in

December of 2023, and which invited offers for renewable projects greater than 100 kW per site and battery energy storage system (BESS) projects greater than 250 kW per site.

In January of 2024, the Energy Contract Working Group (ECWG) approved the shortlisting of a portfolio of rooftop photovoltaic (PV) installations submitted by local San Diego based developer, Luminia LLC. The proposed PPAs with Luminia CA DevCo I, LLC (subsidiary of Luminia LLC) along with an associated Framework Agreement is for energy and renewable attributes generated by a portfolio of four commercial rooftops totaling 3.7 MW of PV that will generate approximately 7,400 MWh of energy in its first year of operation and will provide Community Power renewable attributes over a 20-year term. Community Power has reached PPA terms mutually agreeable to both parties.

## **ANALYSIS AND DISCUSSION**

Staff and outside procurement counsel at Keyes & Fox negotiated the attached PPAs for the purchase of renewable energy from the portfolio of project sites, which consist of multi-use commercial rooftops located in the cities of San Diego and Chula Vista in San Diego County. One representative PPA is included for reference. The remaining three (3) are identical except for the project details as described in the Framework Agreement.

### **PPA Contract Overview**

- Project:
  - Total of 3.7 MW PV generation combined (rooftops)
- Project location: Four (4) commercial rooftops in cities of Chula Vista and San Diego, San Diego County, CA
- Contract term: 20 years
- Expected annual energy production: approximately 7,400 MWh (equivalent power for approximately 720 homes)
- Energy price: Fixed energy price applicable to the full term of the agreement
- Guaranteed Commercial Operation Date: March 31, 2027
- No credit or collateral obligations for Community Power
- Community Power would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones
- A separate Framework Agreement will manage development of the individual site PPAs at a portfolio level. The Framework Agreement governs a process by which the four (4) PPAs presented for approval here may be replaced by PPAs at different site locations, subject to approval by Community Power pursuant to Community Power's Energy Management Risk Policy, and not to exceed the aggregate 3.7 MW PV portfolio.

### **Community Benefits:**

- Over \$2.5 MM in roof or land lease revenue to local building and property owners over the term

- Over \$2 MM in local labor wages and salaries during the construction phases of the projects
- Developer commitment to using local labor, prevailing wage and hiring from San Diego-based apprenticeship programs
- Developer commitment to providing a joint education program with local high schools within a mile of the majority of the rooftop projects, including:
  - (i) provide awareness about the projects that are being installed,
  - (ii) help educate the community about renewable energy and it's benefit to the community and
  - (iii) help grow the green workforce within the community.

The project's value to Community Power's customers and further diversification of Community Power's power portfolio warrants consideration of the PPA. Community Power staff recommends approving these PPAs and Framework Agreement due to the projects' anticipated benefits to the community as well as the projects' role in helping to meet California's need for significant development of reliable, renewable energy generation capacity. The fact that these distributed generation (DG) projects are sited on previously disturbed property of rooftops also spares development on property that could otherwise be utilized for other purposes – one of the reasons why Community Power is committed to including these types of infill projects to our portfolio.

These projects would constitute the first PPAs secured from the Local Distributed RFO and would be among a growing pool of projects that demonstrate Community Power's commitment to local, distributed renewable resources as a vital part of Community Power's power portfolio. As such, staff recommends approving the PPAs and Framework Agreement to allow the projects to move forward with development.

#### **COMMITTEE REVIEW:**

The Energy Contract Working Group (ECWG) recommended staff to move forward in negotiations of the PPAs on January 26, 2024.

#### **FISCAL IMPACT:**

The competitive energy pricing of the PPAs are confidential, but the long-term purchase of renewable energy will provide COMMUNITY POWER with significant cost certainty over the term of the PPAs.

#### **ATTACHMENTS:**

Attachment A: Renewable Power Purchase Agreement with Luminia CA DevCo I, LLC

Attachment B: Solar Development Framework Agreement with Luminia CA DevCo I, LLC

# ITEM 13

# ATTACHMENT A

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** Luminia CA DevCo I, LLC (“**Seller**”)

**Buyer:** San Diego Community Power, a California joint powers authority (“**Buyer**”)

**Description of Facility:** A 1180 kW solar photovoltaic electricity generating facility located in San Diego County, in the State of California, as further described in Exhibit A.

**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	12/31/2025
CEC Pre-Certification Obtained	9/30/2026
Applications for all federal, state and local discretionary permits submitted and accepted as complete by the issuing agency (the “Permitting Submission Milestone”)	5/30/2026
Conditional Use Permit and other discretionary permits obtained	N/A
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	10/31/2025
Executed Interconnection Agreement	3/31/2026
Financial Close	9/30/2026
Major Equipment procured	6/30/2026
Expected Construction Start Date	7/30/2026
Initial Synchronization	11/30/2026
Expected Network Upgrades completed	12/31/2026
Expected Commercial Operation Date	3/31/2027
Guaranteed Commercial Operation Date	3/31/2027

**Delivery Term:** 20 Contract Years.

**Expected Energy:**

Contract Year	Expected Energy (MWh)
---------------	-----------------------

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1	2602
2	2583
3	2564
4	2546
5	2528
6	2510
7	2492
8	2474
9	2456
10	2438
11	2420
12	2403
13	2386
14	2369
15	2352
16	2335
17	2318
18	2301
19	2284
20	2268

**Guaranteed Capacity:** 1.18 MW-AC of Facility capacity

**Dedicated Interconnection Capacity:**1.18 MW

**Contract Price**

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Contract Year	Contract Price
1-20	(flat) with no escalation

**Product:**

- ☒ Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
  - ☒ Energy Only Status
  - ☐ Full Capacity Deliverability Status
- ☒ Any other existing products and products that may be developed or evolve from time to time during the Contract Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and at no additional cost to Seller

**Metering Arrangement:** SC Metered Entity

**Scheduling Coordinator:** Buyer/Buyer's agent

**Security:**

Development Security:

Performance Security:



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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of January \_\_\_\_, 2025 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility;

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product; and

WHEREAS, the Parties’ commitment to develop a portfolio of related facilities is set forth in that certain Solar Development Framework Agreement (the “**Framework Agreement**”), dated as of January \_\_\_\_, 2025, between the Parties;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

### ARTICLE 1 DEFINITIONS

**1.1 Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(e).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Attestation**” has the meaning set forth in Section 4.9.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

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**“Automated Dispatches”** has the meaning set forth in Section 6.1(b).

**“Automatic Generation Control”** or **“AGC”** has the meaning set forth in the CAISO Tariff.

**“Availability Standards”** has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

**“Available Capacity”** means the capacity of the Facility, expressed in kW, that is mechanically available to generate Energy.

**“Bankrupt” or Bankruptcy** means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

**“Bid”** has the meaning as set forth in the CAISO Tariff.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (PPT).

**“Buyer”** means San Diego Community Power, a California joint powers authority.

**“Buyer Bid Curtailment”** means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Energy than the full amount of Energy forecasted in accordance with Section 4.5 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Energy, including where Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the kW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of

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Deemed Delivered Energy during such period shall not include any Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Delivered Energy by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Delivered Energy pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Buyer Default”** means a failure by Buyer to perform Buyer’s obligations hereunder and includes an Event of Default of Buyer.

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 16.1(a).

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

**“CAISO”** means the California Independent System Operator Corporation, or any successor entity performing similar functions.

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Delivered Energy delivered to or from the Delivery Point.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

**“CAISO Grid”** has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

**“CAISO Operating Order”** means the Operating Instruction or Dispatch Instruction as defined in the CAISO Tariff.

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

**“Capacity Damages”** has the meaning set forth in Exhibit B.

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“**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Delivered Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**CEQA**” means the California Environmental Quality Act, as amended or supplemented from time to time.

“**Change in Tax Law**” means (i) any change in or amendment to any Renewable Energy Incentives, (ii) issuance, promulgation or change in, or of, any temporary, proposed, or final Treasury Regulations promulgated under the Code with respect to any Renewable Energy Incentives, or (iii) notice, announcement, court decision, revenue ruling, revenue procedure, or other official guidance published in the Internal Revenue Bulletin that applies, advances, or articulates a new or different interpretation or analysis of any Renewable Energy Incentives.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Code**” means the U.S. Internal Revenue Code, as amended.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” or “**COD**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means [REDACTED]

“**Communications Protocols**” means the protocols developed by the Parties pursuant to



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Section 4.5(d) that involve procedures, software, equipment, and protocols regarding communication with respect to the operation of the Facility pursuant to this Agreement.

**“Compliance Actions”** has the meaning set forth in Section 3.12(c).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.12(b).

**“Confidential Information”** has the meaning set forth in Section 18.1.

**“Construction Start”** has the meaning set forth in Exhibit B.

**“Contract Price”** has the meaning set forth on the Cover Sheet.

**“Contract Term”** has the meaning set forth in Section 2.1.

**“Contract Year”** means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

**“Costs”** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

**“Cover Sheet”** means the cover sheet to this Agreement, which is incorporated into this Agreement.

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

**“CPUC”** means the California Public Utilities Commission or any successor agency performing similar statutory functions.

**“CPUC Master Resource Database”** means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy capacity to load serving entities.

**“Credit Rating”** means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

**“CRS”** has the meaning set forth in Section 4.9.

**“Cure Plan”** has the meaning set forth in Section 11.1(b)(vi).

**“Curtailment Order”** means any of the following:

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(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Distribution Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Distribution Provider's electric system integrity or the integrity of other systems to which the Distribution Provider is connected;

(c) a curtailment ordered by CAISO or the Distribution Provider due to scheduled or unscheduled maintenance on the Distribution Provider's distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Distribution Provider.

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which Energy from the Facility is reduced pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**"Damage Payment"** means the amount to be paid by Seller to Buyer for a Seller default prior to the Commercial Operation Date in a dollar amount set forth in Section 11.3(a).

**"Day-Ahead Market"** has the meaning set forth in the CAISO Tariff.

**"Day-Ahead Schedule"** has the meaning set forth in the CAISO Tariff.

**"Dedicated Interconnection Capacity"** means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Delivery Point under Seller's Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

**"Deemed Delivered Energy"** means (a) the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailment Period, less (b) the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

**"Defaulting Party"** has the meaning set forth in Section 11.1(a).

**"Deficient Month"** has the meaning set forth in Section 4.8(e).

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**“Delivered Energy”** means for each hour, the electric Energy generated by the Facility, net of Electrical Losses and Station Use, and delivered to the Delivery Point.

**“Delivery Point”** has the meaning set forth in Exhibit A.

**“Delivery Term”** shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

**“Development Cure Period”** has the meaning set forth in Exhibit B.

**“Development Security”** means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

**“Disclosing Party”** has the meaning set forth in Section 18.2.

**“Distribution Provider”** means any entity or entities transmitting or transporting the Delivered Energy on behalf of Seller or Buyer to or from the Delivery Point, but excluding Seller or any Seller’s Affiliate responsible for operating any gen-tie line to any point of interconnection to a Distribution Provider’s transmission system or distribution system. For purposes of this Agreement, the Distribution Provider is set forth in Exhibit A.

**“Distribution System”** means the distribution facilities now or hereafter in existence which provide energy distribution service downstream from the Delivery Point.

**“Early Termination Date”** has the meaning set forth in Section 11.2(a).

**“Effective Date”** has the meaning set forth in the Preamble.

**“Electrical Losses”** means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission, distribution, or transformation losses (a) between the Facility Metering Point and the Delivery Point associated with delivery of Delivered Energy.

**“Eligible Renewable Energy Resource”** has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

**“Emission Reduction Credits”** or **“ERCs”** means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources; Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

**“Energy”** means alternating current electrical energy measured in MWh.

**“Energy Management System”** or **“EMS”** means the Facility’s energy management system.

**“Energy Supply Bid”** has the meaning set forth in the CAISO Tariff.

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**“Environmental Costs”** means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of Hazardous Substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such Hazardous Substances on the Site.

**“Event of Default”** has the meaning set forth in Section 11.1.

**“Excess MWh”** has the meaning set forth in Exhibit C.

**“Exercise Period”** has the meaning set forth in Section 14.6(c).

**“Excused Event”** has the meaning set forth in Exhibit P.

**“Expansion Project”** has the meaning set forth in Section 14.6(a).

**“Expected Commercial Operation Date”** is the date by which Seller reasonably expects to achieve Commercial Operation.

**“Expected Construction Start Date”** means the date set forth on the Cover Sheet.

**“Expected Energy”** means the quantity of Delivered Energy that Seller expects to be able to deliver to Buyer during each Contract Year or other time period in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

**“Facility”** means the generating facility described on the Cover Sheet and in Exhibit A, located at the Site, and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point, but excluding any Shared Facilities.

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**“Facility Meter”** means the CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Delivered Energy delivered to the Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Facility Metering Point”** means the location or locations of the Facility Meter shown on Exhibit O.

**“FERC”** means the Federal Energy Regulatory Commission, or any successor government agency.

**“Financial Close”** means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Delivered Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Full Capacity Deliverability Status”** has the meaning set forth in the CAISO Tariff.

**“Future Environmental Attributes”** shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, , which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the

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remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

**“GEP Damages”** has the meaning set forth in Section 4.7.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Delivered Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) Emission Reduction Credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

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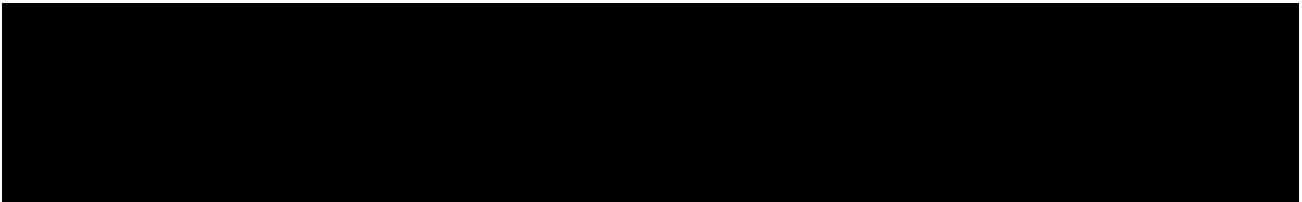
**“Guaranteed Commercial Operation Date”** means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

**“Guaranteed Energy Production”** means an amount of Adjusted Energy Production, as measured in MWh, equal to eighty-five percent (85%) of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

**“Hazardous Substance”** means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

**“Imbalance Energy”** means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

**“Imbalance Reserves”** has the meaning set forth in the CAISO Tariff.



**“Indemnifiable Loss(es)”** has the meaning set forth in Section 16.1(a).

**“Indemnified Party”** has the meaning set forth in Section 16.1(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.1(a).

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in kW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement(s) entered into by Seller or Seller’s Affiliate pursuant to which the Facility will be interconnected with the Distribution System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and

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pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**"Interconnection Facilities"** means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Distribution System in accordance with the Interconnection Agreement.

**"Interconnection Point"** means the point at which Seller's Interconnection Facilities interconnect with the Distribution System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

**"Interest Rate"** has the meaning set forth in Section 8.2.

**"Investment Grade Credit Rating"** means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody's.

**"ITC"** means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

**"Joint Powers Act"** means the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 et seq.).

**"Joint Powers Agreement"** means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

**"Law"** means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

**"Lender"** means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**"Letter(s) of Credit"** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K.



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**“Licensed Professional Engineer”** means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

**“Limited Assignee”** has the meaning set forth in Section 14.4.

**“Local RFO Projects”** means the renewable energy projects, including the Facility, that are subject to power purchase agreements between the Parties resulting from Seller’s response to Buyer’s request for offers titled “San Diego Community Power 2023 Request for Offers for Local Distributed Projects”.

**“Locational Marginal Price”** or **“LMP”** has the meaning set forth in the CAISO Tariff.

**“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, and Renewable Energy Incentives.

**“Lost Output”** means the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer Default. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated in accordance with the definition thereof.

**“Marketable Emission Trading Credits”** means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District’s Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

**“Master File”** has the meaning set forth in the CAISO Tariff.

**“Material Terms”** has the meaning set forth in Section 14.5(b).

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**“Meter Service Agreement”** means “Meter Service Agreement for CAISO Metered Entities” or “Meter Service Agreement for Scheduling Coordinators”, as applicable, as each are defined in the CAISO Tariff.

**“Milestones”** means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

**“Monthly Product Payment”** means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for delivered Product, as calculated in accordance with Exhibit C.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“MW”** means megawatts in alternating current, unless expressly stated in terms of direct current.

**“MWh”** means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than Zero dollars (\$0).

**“Negative LMP Costs”** has the meaning set forth in Exhibit C.

**“NERC”** means the North American Electric Reliability Corporation or any successor entity performing similar functions.

**“Network Upgrades”** means collectively Delivery Network Upgrades and Reliability Network Upgrades.

**“Non-Defaulting Party”** has the meaning set forth in Section 11.2.

**“Notice”** shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

**“Outage Schedule”** has the meaning set forth in Section 4.6(a)(i).

**“Participating Generator Agreement”** has the meaning set forth in the CAISO Tariff.

**“Party”** or **“Parties”** has the meaning set forth in the Preamble.

**“Performance Measurement Period”** means each two (2) consecutive Contract Year period during the Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

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**“Performance Security”** means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

**“Permitted Transferee”** means (a) any Person that is reasonably acceptable to Buyer, or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(i) A Tangible Net Worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, or Baa3 from Moody’s; and

(ii) At least three (3) years of experience in the ownership and operations of facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

**“Person”** means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

**“Planned Outage”** means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

**“PMAx”** means the applicable CAISO-certified maximum operating level of the Facility.

**“PNode”** has the meaning set forth in the CAISO Tariff.

**“Portfolio”** means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

**“Portfolio Content Category 1”** or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Financing”** means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

**“Portfolio Financing Entity”** means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

**“Prevailing Wage Requirement”** has the meaning set forth in Section 13.4.

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**“Product”** has the meaning set forth on the Cover Sheet.

**“Progress Report”** means a progress report including the items set forth in Exhibit E.

**“Project PPA”** has the meaning set forth in Section 14.6(b).

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, solar generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

**“Real-Time Market”** has the meaning set forth in the CAISO Tariff.

**“Receiving Party”** has the meaning set forth in Section 18.2.

**“Recurring Certificate Transfers”** has the meaning set forth in Section 4.8(a).

**“Reliability Network Upgrades”** has the meaning set forth in the CAISO Tariff.

**“Remedial Action Plan”** has the meaning set forth in Section 2.4.

**“Renewable Energy Credit”** has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction, ownership, or production of Product from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to ownership or operation of the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

**“Replacement Energy”** has the meaning set forth in Exhibit G.

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year

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of production as the Renewable Energy Credits that would have been generated by the Facility.

**“Replacement Product”** has the meaning set forth in Exhibit G.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

**“Right of First Refusal”** or **“ROFR”** has the meaning set forth in Section 14.6(a).

**“ROFR Offer”** has the meaning set forth in Section 14.6(b).

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global, Inc.) or its successor.

**“SC Metered Entity”** has the meaning of a “Scheduling Coordinator Metered Entity” as defined in the CAISO Tariff.

**“SCADA Systems”** means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

**“Schedule”** has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

**“Scheduled Energy”** means the Delivered Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

**“Scheduling Coordinator”** or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

**“Security Interest”** has the meaning set forth in Section 8.9.

**“Self-Schedule”** has the meaning set forth in the CAISO Tariff.

**“Seller”** has the meaning set forth on the Cover Sheet.

**“Seller’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

**“Settlement Amount”** means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages unless such damages are part of a Party’s Gains, Losses or Costs as those terms are explicitly defined herein.

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**“Settlement Interval”** has the meaning set forth in the CAISO Tariff.

**“Settlement Period”** has the meaning set forth in the CAISO Tariff.

**“Shared Facilities”** means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy to the Delivery Point from the Facility (which is excluded from Shared Facilities), including the Interconnection Agreement itself, that are used in common with third parties or by Seller.

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at any time prior to the Expected Construction Start Date; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

**“Site Control”** means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

**“SP-15”** means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

**“SQMD Plan”** has the meaning set forth in the CAISO Tariff.

**“Station Use”** means the Energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff).

**“Subsequent Purchaser”** means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

**“Supply Chain Event”** means any delay or failure in Seller’s performance of its obligations hereunder arising out of any of the following, notwithstanding the foreseeability or anticipation thereof at any time: (X) changes in Export and Import Costs or international trade restraints, or (Y) any Import Restriction Action.

**“Supply Plan”** has the meaning set forth in the CAISO Tariff.

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the Distribution Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

**“Tangible Net Worth”** means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

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“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Credits**” means (a) the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities and/or energy storage facilities and (b) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (a).

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3(b).

“**Test Energy**” means Delivered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Distribution Provider informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Third-Party Transaction**” has the meaning set forth in Section 14.6(c).

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence.

“**Ultimate Parent**” means \_\_\_\_\_, a [State of organization] [Type of entity].

“**Unplanned Outage**” means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(d).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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**1.2 Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating



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Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**ARTICLE 2**  
**TERM; CONDITIONS PRECEDENT**

**2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); *provided, however*, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) At any time prior to December 31, 2025, Seller may terminate this Agreement as further set forth in the Framework Agreement.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

**2.2 Commercial Operation; Conditions Precedent.** Seller shall provide Notice to Buyer of the Expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Buyer shall approve or reject Seller's request for confirmation of Commercial Operation, which approval shall not be unreasonably withheld, conditioned or delayed. If confirmed, Commercial Operation shall be deemed to have occurred as of the date stated in such Notice. Upon Buyer's approval of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO have been executed and delivered and are in full force and effect, and a copy of each such agreement has been delivered to Buyer;

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(c) Seller has executed an Interconnection Agreement with the Distribution Provider, which shall be in full force and effect, and a copy of the Interconnection Agreement has been delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility have been obtained and shall be in full force and effect and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has Site Control;

(f) The Facility's Installed Capacity is no less than ninety-five percent (95%) of the Guaranteed Capacity;

(g) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(h) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, qualified reporting entity service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(i) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(k) Seller has made available to Buyer's Scheduling Coordinator all real-time telemetry data reasonably necessary for Buyer's Scheduling Coordinator to perform its duties as Buyer's Scheduling Coordinator for the Facility, including the operational data specified in Exhibit L;

(l) The Parties have agreed to a Communications Protocol as set forth in Section 4.5;

(m) Seller has taken all actions and executed all documents and instruments required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator and has full capability to Schedule and dispatch the Facility; and

(n) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

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(o) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and Commercial Operation Delay Damages.

**2.3 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.4 Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.5 Pre-Commercial Operation Actions.** The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

**ARTICLE 3**  
**PURCHASE AND SALE**

**3.1 Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, (a) Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses), and (b) Buyer shall have the exclusive right to the Installed Capacity, as applicable, and all Product associated therewith. Buyer has no obligation to purchase from Seller any Product for which the associated Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment

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Order. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Energy from any other resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.

**3.2 Sale of Green Attributes.** Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Delivered Energy and Test Energy, if any, generated by the Facility.

**3.3 Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Delivered Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, except as otherwise set forth in this Agreement, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.

**3.4 Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

**3.5 Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

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**3.6 Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products, including Green Attributes on an as-available basis; *provided however*, Buyer may consent to, but has no obligation to purchase Test Energy before ninety (90) days prior to the earlier of the Expected COD or the Guaranteed COD. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to one hundred percent (100%) of all net CAISO revenues received by Buyer for the Test Energy (the “**Test Energy Rate**”). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

**3.7 Reserved.**

**3.8 Reserved.**

**3.9 CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

**3.10 Reserved.**

**3.11 California Renewables Portfolio Standard.**

(a) **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“**ERR**”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(b) The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.12. The term “Project” as used in Section 3.11(a) means the Facility.

(c) **Transfer of Renewable Energy Credits.** Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public

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Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(d) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(e) The term “the contract” as used in Section 3.11(d) means this Agreement.

**3.12 Compliance Expenditure Cap.**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation to Buyer that meets the requirements of the California Renewables Portfolio Standard. The Parties further acknowledge that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of Green Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to ensure that this Agreement or the Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to (A) cause the Facility, the Energy generated by the Facility, or the associated Green Attributes to comply with the California Renewables Portfolio Standard, (B) obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, or (C) a change in WREGIS Operating Rules after the Effective Date increases Seller's costs to comply with its obligations under Section 4.8, then the Parties agree that the maximum aggregate amount of the increase in out-of-pocket costs and expenses that Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at [REDACTED] per MW of Guaranteed Capacity in aggregate over the Contract Term (the “**Compliance Expenditure Cap**”).

(c) Any actions required for Seller to comply with its obligations set forth in Section 3.12(b), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**.”

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(d) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(e) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (i) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the “**Accepted Compliance Costs**”), or (ii) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

(f) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

**3.13 Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller’s Lenders) in their sole discretion as set forth in a written agreement executed by the Parties.

**3.14 Buyer’s Re-Sale of Product.** Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller’s obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.14, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

**ARTICLE 4**  
**OBLIGATIONS AND DELIVERIES**

**4.1 Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the

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delivery of Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Distribution Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Delivered Energy at and after the Delivery Point, including without limitation transmission and distribution costs and transmission and distribution line losses and imbalance charges, except as otherwise set forth in this Agreement. The Delivered Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with Test Energy and the Delivered Energy are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, Seller has not sold such Green Attributes to any other person or entity, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

**4.2 Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Delivered Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

**4.3 Interconnection**. Seller shall be responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-controlled grid, to fulfill Seller's obligations under the Agreement and to allow Buyer's dispatch rights for the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the foregoing interconnection capacity.

**4.4 Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy,



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by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or in such other form as reasonably requested by Buyer.

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Reserved.

(g) CAISO Tariff Requirements. The Facility shall participate in and Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol (as such terms are defined in the CAISO Tariff) for the Facility, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

**4.5 Dispatch Down/Curtailment.**

(a) General. Seller agrees to reduce the amount of Delivered Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications.

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Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. The Parties shall cooperate in good faith to agree upon a Communications Protocol for the Facility at least thirty (30) days prior to the earlier of the Guaranteed Commercial Operation Date or the Expected Commercial Operation Date. Upon request of a Party during the Delivery Term, the Parties shall cooperate in good faith to agree on reasonable changes to the Communications Protocol.

**4.6 Outages.**

**(a) Planned Outages.**

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's non-binding schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than [REDACTED] advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO to qualify for an "Approved Maintenance Outage" under the CAISO Tariff and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith. Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, [REDACTED]  
[REDACTED]

[REDACTED] (iii) such outage is in connection with Force Majeure events, (iv) such outage is required by Law, or the requirements of CAISO or the Distribution Provider and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing.

(c) Planned Outage Timing. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) Notice of Unplanned Outages. Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(e) Inspection. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

**4.7 Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Adjusted Energy Production, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G ("**GEP Damages**"); *provided*, with the prior consent of Buyer, Seller may provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed XX percent (XX%) of the Expected Energy for the previous Contract Year.

**4.8 WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy, as applicable, are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates

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to Buyer and Buyer shall be given sole title to all such WREGIS Certificates.

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Recurring Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Delivered Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy, for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; *provided, however*, that such adjustment shall not apply to the extent that Seller (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, or (ii) the CEC modifies its *RPS Eligibility Guidebook* to enable the full amount

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of Delivered Energy to generate WREGIS Certificates, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Facility in the same calendar month.

**4.9 Green-E Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at <https://www.tfaforms.com/4652008> or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer's request or the last day of the month in which the applicable Delivered Energy was generated, whichever is later. Seller shall comply with all Green-e® requirements applicable to it as the owner of the Facility during the Term.

**ARTICLE 5.**  
**TAXES**

**5.1 Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.

**5.2 Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6**  
**OPERATION AND MAINTENANCE OF THE FACILITY**

**6.1 Operation and Maintenance of the Facility.**

(a) Seller shall comply with Law and Prudent Operating Practice and be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, the generation and sale of Product, all Environmental Costs and the disposal and recycling of any equipment associated with the Facility, including batteries and solar panels in accordance



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with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request.

(b) Seller shall promptly make all necessary repairs to the Facility and the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement.

(c) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment.

(d) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 6.1(c) shall be provided to Buyer within fifteen (15) days of Buyer's request.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

**6.2 Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to the Delivery Point.

**6.3 Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Distribution Provider, Seller's Affiliates, and/or third parties. Seller agrees that any agreements regarding Shared Facilities (a) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (b) shall provide for separate metering and a separate CAISO Resource ID for the Facility, (c) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (d) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Distribution Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be

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allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

**ARTICLE 7**  
**METERING**

**7.1 Metering.** Seller shall measure the amount of Delivered Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. All Facility Meters will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility at Seller's cost (including, for avoidance of doubt, reimbursement to Buyer of reasonable and customary costs owed by Buyer to its Scheduling Coordinator for submitting SQMD Plan meter data to the CAISO), throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. Metering shall be consistent with the Metering Diagram set forth as Exhibit O, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) website (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility.

**7.2 Meter Verification.** Seller shall test the Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

**ARTICLE 8**  
**INVOICING AND PAYMENT; CREDIT**

**8.1 Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Delivered Energy ; (ii) Seller's calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; (iii) the LMP prices at the Delivery Point for each Settlement Period; and (iv) the Contract Price applicable to such Product and Seller's calculation of the Monthly Product Payment due from Buyer, calculated in accordance with Exhibit C; (b) include any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

**8.2 Payment.** Buyer shall make payment to Seller for Monthly Product Payments by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within [REDACTED] of Buyer's receipt of Seller's invoices; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

**8.3 Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

**8.4 Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data



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by the CAISO, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

**8.5 Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

**8.6 Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

**8.7 Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in accordance with the terms of the Framework Agreement. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that

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meets the requirements set forth in the definition of Development Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

**8.8 Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within [REDACTED] after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

**8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

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(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

**ARTICLE 9**  
**NOTICES**

**9.1 Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

**9.2 Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

(a) if sent by United States mail with proper first-class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail;

(b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or

(d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

**ARTICLE 10**  
**FORCE MAJEURE**

**10.1 Definition.**

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from

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complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event of the type described in the foregoing clause may include an act of God or the elements, such as flooding, lightning, hail, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic (including the COVID-19 epidemic); pandemics; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, **“Force Majeure Event”** of the type described in the foregoing paragraph does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except to the extent such inability is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as a Development Cure Period under this Agreement; or (ix) any action or inaction by any third party, including Distribution Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Reliability Network Upgrades, except to the extent expressly permitted as a Development Cure Period under this Agreement.

**10.2 No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is

inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

**10.3 Notice of Force Majeure Event.** Within [REDACTED] the impact of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event claim. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

## **ARTICLE 11**

### **DEFAULTS; REMEDIES; TERMINATION**

- 11.1 Events of Default.** An "Event of Default" shall mean,
- (a) with respect to a Party (the "Defaulting Party") that is subject to the Event of Default, the occurrence of any of the following (subject to any applicable cure periods):
    - (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

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(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(vi), (vii), and (viii), the exclusive remedies for which are set forth in Section 4.9 and Exhibit G and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising best efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, other than Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan within the timeframe set forth in Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(v) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit



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G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to (A) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days ("**Cure Plan**") and (B) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(vi) beginning [REDACTED] in any Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) in such Contract Year is not at least [REDACTED] of the Expected Energy amount for such Contract Year;

(vii) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) is not [REDACTED] of the Expected Energy amount for such two (2) consecutive Contract Year period;

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(ix) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

**11.2 Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance, injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.

**11.3 Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the entire amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's



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damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal the aggregate of all Settlement Amounts plus any and all other amounts due to or from Seller (as of the Early Termination Date) netted into a single amount. There will be no amount owed to Buyer. Seller shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to Seller's duty to mitigate, Seller shall not have to enter into replacement transactions to establish a Settlement Amount. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(iii)

(b) Termination Payment. On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

**11.4 Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60)

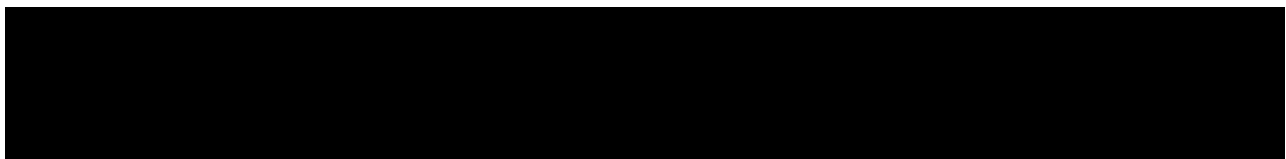
days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

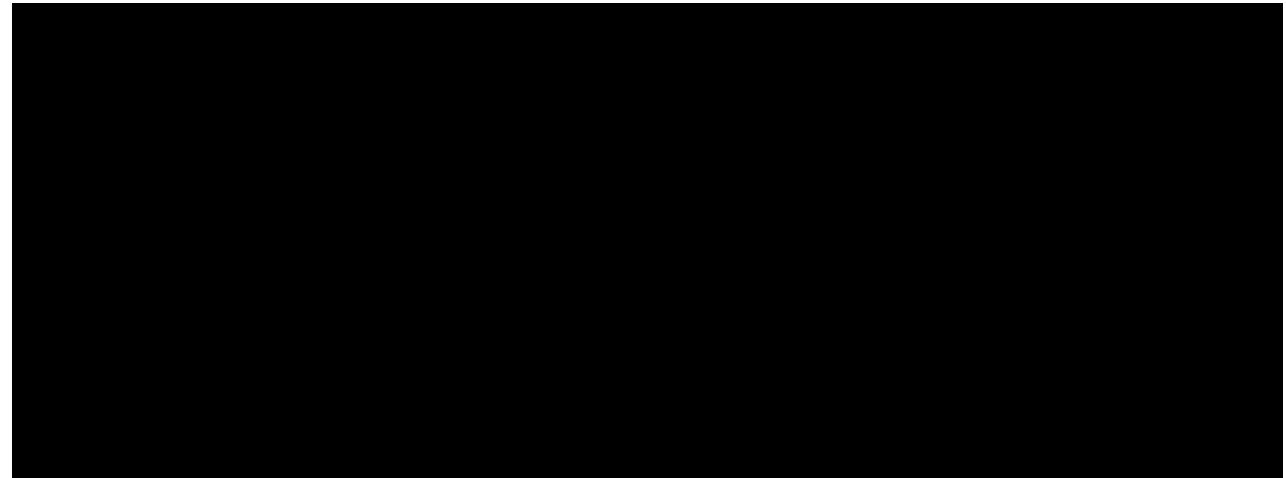
**11.5 Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable shall be determined in accordance with Article 15.

**11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

**11.7 Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**11.8 Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.





**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

**12.1 No Consequential Damages.** EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD-PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

**12.2 Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. TO THE

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EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2, 11.3, 11.9 AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

**ARTICLE 13**  
**REPRESENTATIONS AND WARRANTIES; AUTHORITY**

**13.1 Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its

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terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility will be located in the State of California.

(f) Seller shall maintain Site Control throughout the Delivery Term.

(g) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents, if applicable.

**13.2 Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided, however*, that nothing in this Agreement

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shall waive the obligations or rights set forth in the California Tort Claims Act (California Government Code Section 810 et seq.).

**13.3 General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

**13.5 Prevailing Wage.** Seller shall use commercially reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable Laws, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any applicable labor Laws. In addition, Seller shall use commercially reasonable efforts to:

(a) Use fifty percent (50%) Union labor or skilled and trained workforce across all Local RFO Projects;

(b) Hire from San Diego-based apprenticeship programs, with an emphasis on hyper-local programs near the Local RFO Projects;

(c) Ensure all sanitation, equipment rental, and waste services are provided by local companies; and

(d) Work with community-based organizations to ensure that all RFPs related to the Facility are posted to local boards and released in appropriate community newsletters.

**13.6 Workforce Development and Supplier Diversity.** Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller’s certification status with the CPUC Supplier Clearinghouse, and voluntary disclosure regarding Seller’s efforts to work with diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises in a form similar to Exhibit S.

ARTICLE 14  
ASSIGNMENT

**14.1 General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

**14.2 Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement.

**14.3 Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (California Government Code Section 81000 et seq.) or the regulations thereto, California Section 1090, or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:

(i) The assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer.

**14.4 Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

**14.5 Permitted Assignment by Buyer.** Buyer may make a limited assignment to an entity with an Investment Grade Credit Rating ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of an assignment agreement between and among Seller, Buyer, and Limited Assignee substantially in the form set forth in Exhibit T, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

**14.6 Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity.** Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities with Seller or the Facility (each such future phase or separate renewable energy or energy storage project, an "**Expansion Project**"). The requirements of this Section 14.6 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the



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“**ROFR Offer**”), for Buyer to accept, subject only to finalization and execution of a power purchase agreement for the Expansion Project (the “**Project PPA**”) incorporating the Material Terms of such Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the “**Material Terms**”).

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer’s receipt of the ROFR Offer (the “**Exercise Period**”), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project PPA for the Expansion Project with a third party (the “**Third-Party Transaction**”); provided, that if such Third-Party Transaction is not consummated within twelve (12) months of the date of the Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the Expansion Project without affording Buyer the right of first refusal on the terms and conditions of this Section 14.6.

(d) Notwithstanding any of the above, if the sum of (i) the Delivered Energy and (ii) the generating energy and/or storage energy from the Expansion Project for any Settlement Interval would exceed the Dedicated Interconnection Capacity for such Settlement Interval, then the generating energy and/or storage energy from the Expansion Project shall be curtailed first prior to curtailing the Delivered Energy.

**ARTICLE 15**  
**DISPUTE RESOLUTION**

**15.1 Governing Law; Venue.**

(a) This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. [STC 17].

(b) For avoidance of doubt, although “agreement” is not capitalized in Section 15.1(a), the parties intend for “agreement” to mean this Agreement, and for “party” and “parties” to refer to the Party and Parties as set forth in the preamble to this Agreement.

(c) The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts of the State of California sitting in the County of San Diego.

**15.2 Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder

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within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to them at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

**15.3 Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

**ARTICLE 16**  
**INDEMNIFICATION**

**16.1 Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement ("**Indemnifiable Losses**").

(b) Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

**16.2 Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense

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thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

**ARTICLE 17**  
**INSURANCE**

**17.1 Insurance.**

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED] endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as additional insured and contain standard cross-liability and severability of interest provisions.

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(e) Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of [REDACTED] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(f) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED] (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(i) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days' prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and workers' compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

**ARTICLE 18**  
**CONFIDENTIAL INFORMATION**

**18.1 Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was

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rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; (iv) information that the recipient independently developed without a violation of this Agreement; and (v) information that is determined by Buyer to be subject to the California Public Records Act.

**18.2 Duty to Maintain Confidentiality.**

(a) The Party receiving Confidential Information (the “**Receiving Party**”) from the disclosing Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Receiving Party’s members, employees, lenders or investors, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to (a) comply with any applicable Law, regulation, any exchange, control area or independent system operator rule, an order of a court; or regulatory requirement applicable to the Receiving Party, or (b) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

(b) The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (California Government Code Section 7920 *et seq.*). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

**18.3 Requested Confidential information.** Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer’s Indemnified Parties from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information

**18.4 Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations

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hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

**18.5 Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are no less stringent than those in this Article 18 to the same extent as if it were a Party. Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

**18.6 Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE 19**  
**MISCELLANEOUS**

**19.1 Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

**19.2 Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

**19.3 No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

**19.4 No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity

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and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender and/or Indemnified Party.

**19.5 Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

**19.6 Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Law.

**19.7 Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

**19.8 Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

**19.9 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**19.10 No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.



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**19.11 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

**19.12 Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

**19.13 Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

*[Signatures on following page]*



IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**LUMINIA CA DEVCO I, LLC, a  
California limited liability company**

**SAN DIEGO COMMUNITY POWER, a  
California joint powers authority**

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

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

## **EXHIBIT A**

### **FACILITY DESCRIPTION**

**Project Name:** Mesamint Solar

**Site includes all or some of the following APNs:** 6782922900

**County:** San Diego County

**CEQA Lead Agency:** Not Applicable

**Zip Code:** 92127

**Latitude and Longitude:** 33.016632, -117.106306

**Facility Description:** Roof Top Solar PV

**Delivery Point:** Interconnection Point On-Site CAISO Meter

**Facility Meter and Metering Points:** See Exhibit O.

**PNode:**<sup>1</sup> BERNARDO\_6\_N014

**Interconnection Point:** Facility Meter

**Distribution Provider:** San Diego Gas & Electric

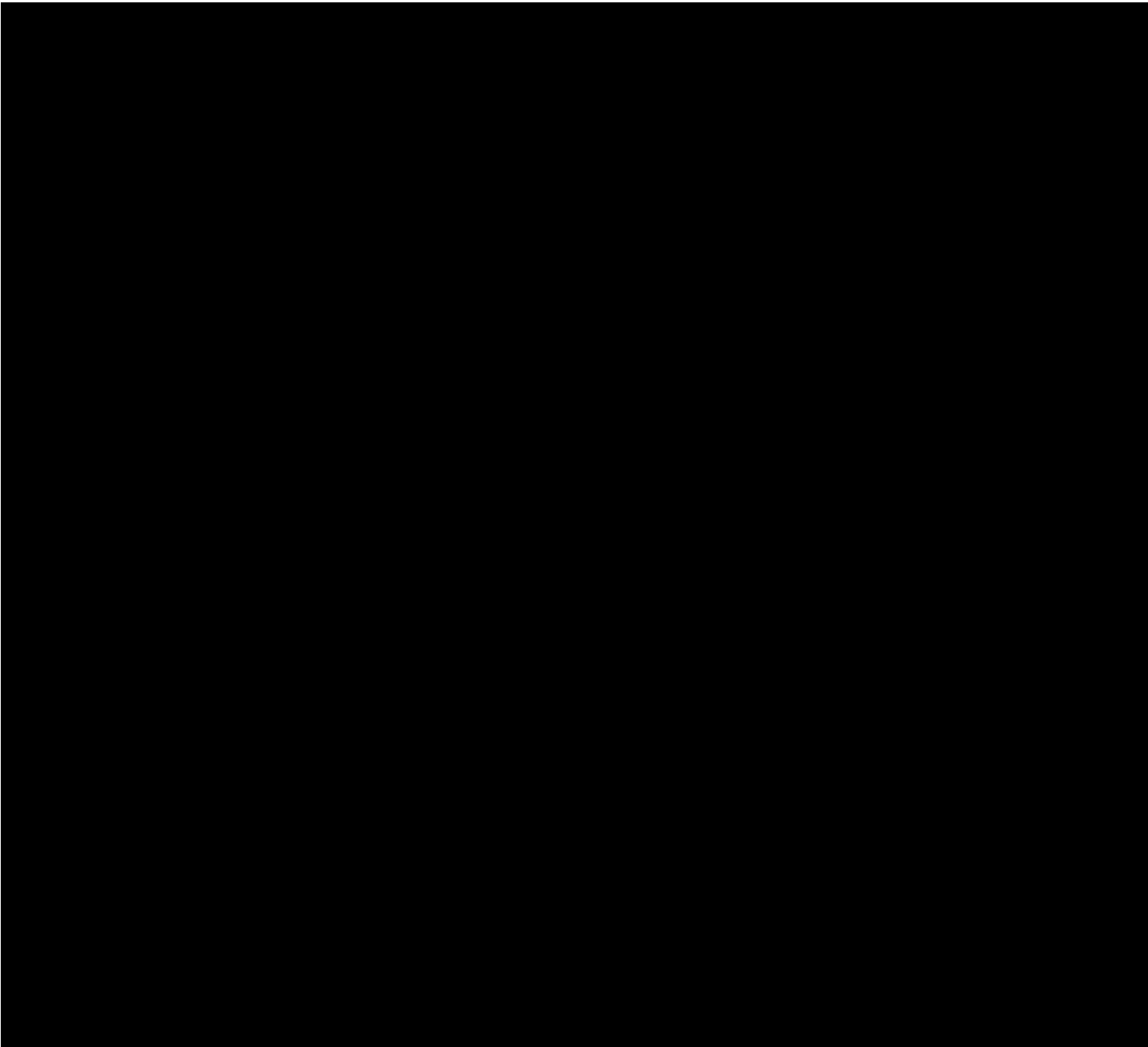
**Local Capacity Area and Sub-Local Capacity Area:** San Diego-Imperial Valley San Diego

**Additional Information:** Site plan provided below.

**Substitution of Facilities.** Seller will be permitted to replace this Facility with a substitute facility according to the procedure set forth in the Framework Agreement.

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<sup>1</sup> If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder to reflect the PNode corresponding to the Facility's Interconnection Point with the CAISO Grid.



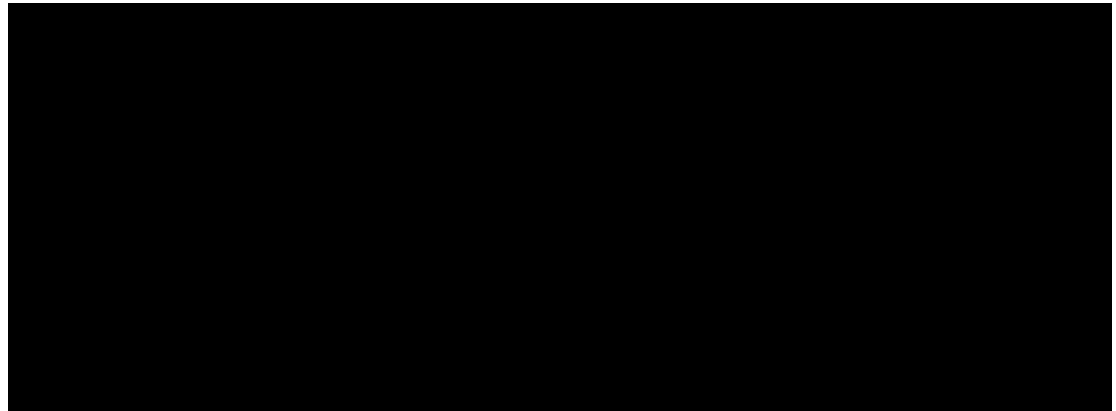
## EXHIBIT B

### MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction Start.**

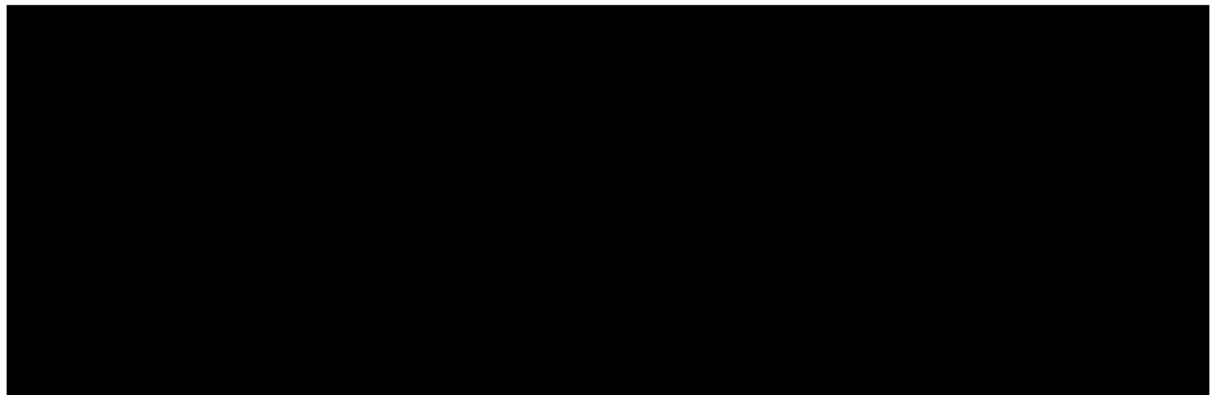
- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.



- (b) Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended (i) pursuant to Section 2(a) of Exhibit B, (ii) by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B, and/or (iii) a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

- a. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is [REDACTED] prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this this Section 2(c) of Exhibit B.
3. **Termination for Failure to Timely Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** In addition to Seller's one-time opportunity to update the Guaranteed Commercial Operation Date pursuant to Exhibit B, Section 2.a., the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:



Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed [REDACTED], for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d)

above) shall not exceed [REDACTED]. Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, or (ii) Seller failed to provide requested documentation as provided below. Except as set forth in Section 10.3 regarding Force Majeure Event notice requirements, Seller shall provide prompt written notice to Buyer of a Development Cure Period delay, but in no case more than [REDACTED] after Seller became aware of such delay, except that in the case of a delay occurring within [REDACTED] of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within [REDACTED] of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

**5. Failure to Reach Guaranteed Capacity.**

If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Construction Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

**EXHIBIT C**  
**COMPENSATION**

Buyer shall compensate Seller for the Product in accordance with this Exhibit C (the “**Monthly Product Payment**”).

(a) Renewable Rate. Buyer shall pay Seller the Contract Price for each MWh of Delivered Energy, plus Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Excess Contract Year Deliveries Over [REDACTED]. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Delivered Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval, but not less than zero dollars (\$0), or (b) [REDACTED].

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Delivered Energy, in excess of the product of the Installed Capacity *multiplied by* the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“**Negative LMP Costs**”).

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for Delivered Energy or Deemed Delivered Energy during any Curtailment Period.

(e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Renewable Energy Incentives. Except as set forth in [REDACTED], the Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Renewable Energy Incentives, or if any Renewable Energy Incentives expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Renewable Energy Incentives. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Renewable Energy Incentives or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Delivered Energy and Product, shall be effective regardless of whether the sale of Delivered Energy is eligible for, or receives Renewable Energy Incentives during the Contract Term. Notwithstanding the foregoing, if after the Effective Date of this Agreement, the Renewable Energy Incentives are increased from the current credit amount of [REDACTED]

**EXHIBIT D**

**SCHEDULING COORDINATOR RESPONSIBILITIES**

(c) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Test Energy, and the Product at the Delivery Point. Prior to the Initial Synchronization of the Facility, Seller or Seller's designee shall be the Scheduling Coordinator for the Facility. At least thirty (30) days prior to the Initial Synchronization, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, (ii) Seller shall make available to Buyer's Scheduling Coordinator all real-time telemetry data reasonably necessary for Buyer's Scheduling Coordinator to perform its duties as Buyer's Scheduling Coordinator, including the relevant operational data specified in this Exhibit D, Section (i), and (iii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.

(d) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or fax transmission to the personnel designated to receive such information.

(e) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs (except as otherwise set forth in this Agreement), and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO Dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. In addition, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties and Imbalance Energy costs (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to



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perform its duties as Scheduling Coordinator for the Facility), or (ii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(f) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(g) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(h) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(i) Master Data File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CPUC Master Resource Database and Master Data File. Seller shall provide the data to Buyer that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior

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written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) and CPUC Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

(j) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

**EXHIBIT E**  
**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. [Prevailing wage reports as required by Law.]
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Distribution System and all other interconnection utility services.
14. Workforce Development or Supplier Diversity Reporting (if applicable).
15. Any other documentation reasonably requested by Buyer.

## EXHIBIT F-1

### FORM OF AVERAGE EXPECTED ENERGY REPORT

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT F-2

### FORM OF AVAILABLE CAPACITY FORECAST

Available Capacity, MWh Per Hour – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.9, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)] - (E + F)$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market (as such term is defined in the CAISO Tariff) hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes as reasonably determined by Buyer

D = the Renewable Rate for the Contract Year which ends each Performance Measurement Period, in \$/MWh

E = The amount of GEP Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is (C - D)

**“Adjusted Energy Production”** shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

No payment shall be due if the calculation of (a) (A - B), (b) (C - D), or (c) [(A - B) \* (C - D)] - (E + F), yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

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**“Replacement Energy”** means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period or, with Buyer’s prior written consent, in the following calendar year.

**“Replacement Product”** means (a) Replacement Energy, and (b) Replacement Green Attributes for the previous Contract Year. Seller shall provide Replacement Product for the same Performance Measurement Period or, with Buyer’s prior written consent, in the following calendar year.

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to San Diego Community Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] (“**Agreement**”) by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [*DATE*], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Distribution System in accordance with the Interconnection Agreement.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with this Agreement and/or the CAISO.
5. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
6. Authorization to parallel the Facility was obtained from the Distribution Provider on \_\_\_\_ [*DATE*] \_\_\_\_.
7. The Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation \_\_\_\_ [*DATE*] \_\_\_\_.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_ [*DATE*] \_\_\_\_.
9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time Markets in respect of the Facility.
10. Seller has segregated and separately metered Station Use to the extent required in accordance with the retail service provider’s tariff, and any such meter(s) have the same or greater level of accuracy as is required under the retail service provider’s tariff.



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EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to San Diego Community Power Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The performance test for the Facility demonstrated peak electrical output of \_\_\_ kW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**");

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[*LICENSED PROFESSIONAL ENGINEER*]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J**  
**RESERVED**

**EXHIBIT K**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:  
Bank Ref.:  
Amount: US\$[XXXXXXXX]  
Expiry Date:

Beneficiary:

San Diego Community Power Authority  
PO Box 12716  
San Diego, CA 92112

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of San Diego Community Power, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own

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immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of \_\_\_\_\_ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of San Diego Community Power and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to San Diego Community Power by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Community Power

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_

**EXHIBIT L**  
**FACILITY OPERATIONS DATA**

<b>Data Point</b>
Unit Gross kW
Unit Net kW
High Sustainable Limits
ADS 5 Minute Dispatch Operating Targets Setpoint
Aggregate Gross MW
Interconnection Point/Delivery Point MW
Meteorological Data <sup>2</sup>
Heartbeat
Frequency

---

<sup>2</sup> Meteorological Data includes irradiance, back panel temperature, wind speed, wind direction, and temperature and such other data as mutually agreed to by the Parties.

**EXHIBIT M**  
**RESERVED**



## EXHIBIT N

### NOTICES

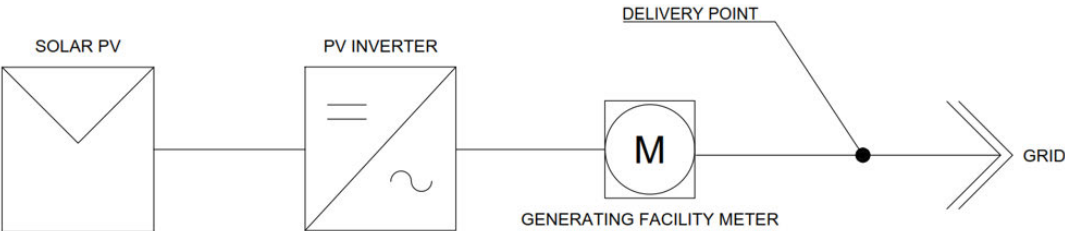
<b>LUMINIA CA DEVCO I, LLC</b> ("Seller")	<b>SAN DIEGO COMMUNITY POWER</b> ("Buyer")
<b>All Notices:</b> 4445 Eastgate Mall, Suite 200 San Diego, CA 92121 Attn: Alan Whiting, CFO  Phone: (858) 866-8777 Email: info@luiminia.io	<b>All Notices:</b> PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Chief Commercial Officer Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
<b>Reference Numbers:</b> [REDACTED] [REDACTED]	<b>Reference Numbers:</b> Duns: 11-754-8142 Federal Tax ID Number: 85-0824464
<b>Invoices:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Invoices:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
<b>Scheduling:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Scheduling:</b> Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
<b>Confirmations:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Confirmations:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
<b>Payments:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Payments:</b> Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@maher CPA.com
<b>Wire Transfer:</b> [REDACTED] [REDACTED] [REDACTED]	<b>Wire Transfer:</b> [REDACTED] [REDACTED] [REDACTED]

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<b>LUMINIA CA DEVCO I, LLC</b> ("Seller")	<b>SAN DIEGO COMMUNITY POWER</b> ("Buyer")
<b>With additional Notices of an Event of Default to:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>With additional Notices of an Event of Default to:</b> Attn: Veera Tyagi, General Counsel PO Box 12716 San Diego, CA 92112 Email: <a href="mailto:vtyagi@sdcommunitypower.org">vtyagi@sdcommunitypower.org</a>
<b>Emergency Contact:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Emergency Contact:</b> Attn: Byron Vosburg, Chief Commercial Officer Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

**EXHIBIT O**

**METERING DIAGRAM**



## **EXHIBIT P**

### **WORKFORCE DEVELOPMENT**

#### **Sample Supplier Diversity Survey**

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "Not Applicable" or "Decline to State."

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

\*Required

1. Business Name\*

2. Email Address\*

3. Where is your business located/headquartered?

4. Is your business certified under General Order 156 (GO 156)? GO 156 is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database at [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com).

Yes

No

Qualified as a WMDVLGBTBE but not GO 156 certified

5. If you answered "yes" to Question 4, when does your certification expire?

6. If you answered "yes" or "qualified, but not certified" to Question 4, in which categories are you certified or qualified? Please choose all that apply.

Minority Owned

Women Owned

LGBT Owned

Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

7. If your business is a minority-owned business enterprise, what GO156 certification or

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qualification does your business fall under?

Black American

Hispanic American

Asian Pacific American

Native American

8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the “Commodity Codes” search bar, here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?

11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.

12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.

13. Does your business have a history of using apprenticeship programs, local hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP’s service area.

Yes, apprenticeship programs in this recent contract with SDCP

Yes, local labor in this recent contract with SDCP

Yes, union labor in this recent contract with SDCP

Yes, multi-trade PLA in this recent contract with SDCP

Yes, apprenticeship programs but not in this contract with SDCP

Yes, history of local hire but not in this contract with SDCP

Yes, history of union labor but not in this contract with SDCP

Yes, history of multi-trade PLA but not in this contract with SDCP

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Uses California-based labor, but not local to SDCP's service areas

None of the above

Not applicable

14. Are you a small business? Please refer to the Small Business Association' Size Standards tool for more information: <https://www.sba.gov/sizestandards>.

Yes

No

15. If you answered "yes" to question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.

16. Is there any additional feedback that you would like to provide to SDCP at this time?

17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?

18. If the answer to question 17 is "Yes," please explain and provide supporting documentation.

19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?

20. If the answer to question 19 is "Yes", please explain and provide supporting documentation.

**EXHIBIT Q**  
**FORM OF LIMITED ASSIGNMENT AGREEMENT**  
**LIMITED ASSIGNMENT AGREEMENT**

This Limited Assignment Agreement (this “**Agreement**”) is entered into as of [\_\_\_\_] (the “**Assignment Agreement Effective Date**”) by and among [PPA SELLER], a [\_\_\_\_] limited liability company (“**PPA Seller**”), San Diego Community Power, a California joint powers authority (“**PPA Buyer**”), and [\_\_\_\_], a Delaware corporation (“**Financing Entity**”).

**RECITALS**

WHEREAS, PPA Buyer and PPA Seller are parties to that certain PPA identified on Appendix 1 hereto;

WHEREAS, in connection with a prepaid electricity transaction between California Community Choice Financing Authority (“**Issuer**”) and Energy Prepay IV, LLC (“**Prepay LLC**”), and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to Limited Assignee, and Limited Assignee wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below);

WHEREAS, pursuant to this Agreement, during the Assignment Period, Limited Assignee will receive the Assigned Product and Limited Assignee will deliver such Assigned Product to Prepay LLC, which will redeliver such Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, during the Assignment Period, Limited Assignee will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Limited Assignee (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

**AGREEMENT**

**1. Definitions.**

Unless the context otherwise specifies or requires, or defined below, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the

respective meanings set forth below, unless the context otherwise requires:

**“Agreement”** has the meaning specified in the first paragraph above.

**“Assigned Product”** means (i) [PV Energy] and (ii) [Green Attributes (PCC1)], as each is defined in the PPA.

**“Assigned Rights and Obligations”** means (i) the rights of PPA Buyer under the PPA to receive the Assigned Product in each Month during the Assignment Period, as such rights may be limited or further described in the “Further Information” section on Appendix 1, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to Limited Assignee hereunder, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

**“Assignment Early Termination Date”** has the meaning specified in Section 5(b).

**“Assignment Period”** has the meaning specified in Section 5(a).

**“Assignment Period End Date”** means 11:59:59 p.m. pacific prevailing time on [\_\_\_\_\_].

**“Assignment Period Start Date”** means [\_\_\_\_\_].

**“Claims”** means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys’ fees, experts’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

**“Custodian”** means U.S. Bank Trust Company, National Association.

**“Delivered Product Payment Obligation”** has the meaning specified in Section 3(a).

**“Issuer”** means California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended).

**“Limited Assignee”** has the meaning specified in the first paragraph of this Agreement.

**“Month”** means a calendar month.

**“Monthly Gross Amount”** has the meaning specified in Section 3(c).

**“PPA Buyer”** has the meaning specified in the first paragraph of this Agreement.

**“PPA Seller”** has the meaning specified in the first paragraph of this Agreement.

**“Prepaid Agreement”** means that certain Prepaid Energy Sales Agreement dated as of November 5, 2024 by and between Prepay LLC and Issuer as amended from time to time.



“**Prepay LLC**” has the meaning specified in the first paragraph of this Agreement.

“**Prepay Power Supply Contract**” means that certain Power Supply Contract dated November 5, 2024 by and between PPA Buyer and Issuer as amended from time to time.

“**Receivables**” has the meaning given to such term in Section 3(f).

“**Retained Rights and Obligations**” has the meaning specified in Section 3.

## **2. Transfer and Undertakings.**

(a) PPA Buyer hereby assigns, transfers and conveys to Limited Assignee all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Product during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to Limited Assignee the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer’s assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and, subject to Section 3, the delegation of the Assigned Rights and Obligations to Limited Assignee and the exercise and performance by Limited Assignee of the Assigned Rights and Obligations during the Assignment Period.

(c) Limited Assignee hereby accepts such assignment, transfer and conveyance of PPA Buyer’s right, title and interest in and to the Assigned Products during the Assignment Period, and PPA Buyer’s delegation of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

## **3. Limited Assignment.**

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer’s rights and obligations under the PPA, and that all rights and obligations (including without limitation obligations with respect to payment for any Product not included in the Assigned Product and any other amounts owed under the PPA) arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be “**Retained Rights and Obligations**” that are retained solely by PPA Buyer, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) **Limited to Delivered Product Payment Obligation.** Limited Assignee’s sole payment obligation hereunder will be to pay the Floating Price Payments into the Custodial Account as such terms are defined in and described on Appendix 1 (the “**Delivered Product Payment Obligation**”). Limited Assignee and PPA Buyer each agree to instruct the Custodian in accordance with Section 3(c) hereof to pay PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section [ ] of the PPA. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period, including in the event that either (i) Limited Assignee does not make the payments into the Custodial Account as described above or (ii) the Custodian does not make the payments to the PPA Seller from the Custodial Account as described above.

(b) **Retained Rights and Obligations.** Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or Limited Assignee, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations, and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **Invoicing.** During the Assignment Period, PPA Seller shall continue to provide PPA Buyer a monthly invoice of amounts owing under the PPA, which invoice shall show the total amount due to PPA Seller under the PPA for such Month (the “**Monthly Gross Amount**”). Promptly following PPA Buyer’s receipt of each monthly invoice from PPA Seller during the Assignment Period and, in any event, no later than seven (7) days thereafter, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to Limited Assignee and (ii) a statement to each of Limited Assignee and the Custodian indicating (A) the Monthly Gross Amount; (B) the Delivered Product Payment Obligation; and (C) the “Retained Payment Obligation”, which shall be an amount equal to the Monthly Gross Amount minus the Delivered Product Payment Obligation. PPA Buyer and Limited Assignee covenant and agree to instruct the Custodian to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA, *provided*, that the liability of Limited Assignee hereunder to PPA Seller is limited as described on Appendix 1. PPA Buyer and Limited Assignee may agree in a separate writing as to the allocation of the Monthly Gross Amount between PPA Buyer and Limited Assignee of amounts paid by the Custodian to PPA Seller hereunder. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA. For the avoidance of doubt, the Parties acknowledge and agree that any invoice adjustments or reconciliations occurring after the initial settlement of amounts due under a monthly invoice shall be resolved exclusively between PPA Seller and PPA Buyer pursuant to the terms of the PPA.

(d) **Scheduling.** All scheduling of Energy associated with the Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that during the Assignment Period (i) title to Assigned Product will pass to Limited Assignee upon delivery by PPA Seller at the Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to Prepay LLC, Issuer and then to PPA Buyer upon delivery by Limited Assignee at the same point where title is passed to Limited Assignee pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as Limited Assignee’s agent with regard to scheduling Assigned Product; and (iv) PPA Buyer will provide copies to Limited Assignee of (A) any notice of a Force Majeure Event delivered under the PPA, (B) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in an Event of Default, (C) annual forecasts and monthly forecasts with respect to the Assigned Product delivered by PPA Seller under [Section \_\_] of the PPA, (D) invoices delivered by PPA Seller under [Section \_\_ of the PPA] (with a copy to the Custodian if and to the extent retained by PPA Buyer and Limited Assignee), and (E) any other information reasonably requested by Limited Assignee relating to Assigned Product.

(e) **Amendments.** PPA Buyer will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an

amendment, waiver, supplement, modification or other change will not have any effect on Limited Assignee's rights or obligations under this Agreement unless and until Limited Assignee receives written notice thereof. No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties.

(f) **Setoff of Receivables.** Pursuant to the Prepaid Agreement, Prepay LLC has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by Limited Assignee pursuant to the Assigned Rights and Obligations, Prepay LLC may sell such Receivables to Limited Assignee and, provided that Limited Assignee has notified PPA Seller in writing (with a copy to PPA Buyer) (a "**Receivables Setoff Notice**") that the amount of any such Receivables is true and accurate, Limited Assignee may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that (1) at no time shall PPA Seller be required to pay Limited Assignee for any amounts by which such Receivables exceed any Delivered Product Payment Obligations, and (2) at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice. The amount of any Receivables set forth in a Receivables Setoff Notice shall be final and binding unless PPA Buyer shall have provided PPA Seller and Limited Assignee a written notice within two (2) Business Days of its receipt of a Receivables Setoff Notice containing conclusive evidence that such amount is incorrect and asserting what PPA Buyer has determined is the correct amount of Receivables. If any dispute arises therefrom, Limited Assignee shall still be entitled to set-off the amount of Receivables set forth in its Receivables Setoff Notice as provided above, and any such dispute as to the correct amount of Receivables shall be settled exclusively between PPA Buyer and PPA Seller with no liability to Limited Assignee, provided that at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice.

#### **4. Forward Contract.**

The Parties acknowledge and agree that this Agreement is intended to constitute a "forward contract" and that the Parties is intended to constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

#### **5. Assignment Period; Assignment Early Termination.**

(a) **Assignment Period.** The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date; and further provided that the Assignment Period will automatically terminate upon the expiration or early termination of either the Delivery Term or the PPA.

(b) **Early Termination.** An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:

i. delivery of a written notice of termination by either Limited Assignee or PPA Buyer to each of the other Parties hereto;

ii. delivery of a written notice of termination by PPA Seller to each of Limited Assignee and PPA Buyer following Limited Assignee's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five (5) Business Days following receipt by Limited Assignee of written notice thereof;

iii. delivery of a written notice by PPA Seller if any of the events described in [Section 1.1, definition of "Bankrupt" of the PPA], occurs with respect to Limited Assignee; or

iv. delivery of a written notice by Limited Assignee if any of the events described in [Section 1.1, definition of "Bankrupt" of the PPA], occurs with respect to PPA Seller.

(c) **Reversion of Assigned Rights and Obligations.** The Assignment Period will end at the end of the last delivery hour on the date specified in any termination notice provided pursuant to Section 5(b). The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date, early termination pursuant to Sections 5(d) and at the expiration of the Assignment Period the Assigned Rights and Obligations will revert from Limited Assignee to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date or early termination pursuant to Section 5(d) shall immediately and automatically revert from Limited Assignee to PPA Buyer, provided that (i) Limited Assignee shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Limited Assignee prior to the Assignment Early Termination Date or prior to the expiration of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date or the expiration of the Assignment Period.

(d) **Early Termination for PPA Termination.** The Assignment Period will automatically terminate upon the expiration or early termination of the PPA.

## **6. Representations and Warranties.**

(a) **Copy of PPA.** As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to Limited Assignee that a true, complete, and correct copy of the PPA as of such date is attached hereto as Appendix 3.

(b) **No Default.** As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to Limited Assignee that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that, to its knowledge, would give either of them the right to terminate the PPA or suspend performance thereunder.

(c) **Other.** Each of PPA Buyer and PPA Seller represents and warrants to each other and to Limited Assignee that:

i. It has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and

ii. To its knowledge, all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

(d) **Representations.** Each Party represents to each of the other Parties as of the Assignment Agreement Effective Date:

i. **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

ii. **Powers.** It has the power to execute, this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

iii. **No Violation or Conflict.** Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency presently in effect, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

iv. **Consents.** All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

v. **Obligations Binding.** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles

of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

vi. **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

vii. **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties.** None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

## **7. Miscellaneous.**

Article [ ] (Confidential Information), [ ] (No Consequential Damages), [ ] (Amendments), [ ] (No Agency, Partnership, Joint Venture or Lease), Sections [ ] (Severability), [ ] (Electronic Delivery), [ ] (Counterparts), Section [ ] (Binding Effect) and [ ] (Forward Contract) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

## **8. Costs and Expenses.**

The Parties shall each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

## **9. Notices.**

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be delivered in accordance with [Section \_\_\_\_] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify Limited Assignee of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to Limited Assignee shall be provided to the address set forth in Appendix 2. Each Party may update its address from time to time by notice to the other Parties.

## **10. Governing Law; Dispute Resolution.**

(a) Governing Law. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.

(b) Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this Agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of Limited Assignee and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the “chairperson”) within thirty (30) days of the commencement of the arbitration. If either Limited Assignee or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Limited Assignee and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be equally split in one-third (1/3) shares by each of Limited Assignee, PPA Buyer, and PPA Seller. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 10(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(c) Judicial Reference. Without limiting the provisions in Section 10(b), if Section 10(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of

limitation period) (each, a “**Dispute**”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“**CCP**”), or their successor sections (a “**Reference Proceeding**”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10(c)(i).

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the “**Disputing Party**”) shall provide the other Parties (the “**Responding Parties**”) with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the “**Notice of Dispute**”). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the “**Dispute Response**”). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within fifteen (15) days after receipt of the Dispute Response, (the “**Negotiation Period**”), then any Party may provide to the other Parties written notice of intent for judicial reference (the “**Impasse Notice**”) in accordance with the further provisions of this Section 10(c).

ii. Applicability; Selection of Referees. Within 10 days of the delivery of an Impasse Notice, each of Limited Assignee and PPA Buyer shall nominate one (1) referee. The two (2) referees (the “**Party-Appointed Referees**”) shall appoint a third referee (the “**Third Referee**”, together with the Party-Appointed Referees, the “**Referees**”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric energy industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

iii. Inability to Agree upon Third Referee. If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the “**Court**”), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and Limited Assignee shall have one (1) peremptory challenge to the referee selected by the Court.

iv. Discovery; Proceedings.

(A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the Referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within



180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the Referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the Referees, and the Referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

v. Decision. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The Referees shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

vi. Expenses. Each of Limited Assignee, PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be equally split in one-third (1/3) shares by each of Limited Assignee, PPA Buyer, and PPA Seller

**10. U.S. Resolution Stay Protocol.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol (“**ISDA U.S. Stay Protocol**”), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, Limited Assignee shall be deemed to be a Regulated Entity, and PPA Buyer and PPA Seller each shall be deemed to be an Adhering Party. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.



IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Assignment Agreement Effective Date.

[PPA SELLER]

By: \_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

SAN DIEGO COMMUNITY POWER

By: \_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

[FINANCING ENTITY].

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix 1

### Assigned Rights and Obligations

**PPA:** Renewable Power Purchase Agreement dated as of [\_\_\_\_], by and between PPA Buyer and PPA Seller, as may be amended from time to time.

**Delivery Point:** [\_\_\_\_]

**Further Information:** PPA Seller shall transfer or, to the extent applicable, continue to transfer, to PPA Buyer the WREGIS Certificates associated with all [Renewable Energy Credits] corresponding to all [PV Energy] under the PPA pursuant to [Section \_\_\_\_ of the PPA], provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both Limited Assignee and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month after such notice period has expired, unless otherwise agreed. All Assigned Product delivered by PPA Seller to Limited Assignee shall be a sale made at wholesale, with Limited Assignee reselling all such Assigned Product. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.

**Limitation of Limited Assignee Liability.** Limited Assignee has separately agreed with the PPA Buyer and the Custodian (pursuant to the Custodial Agreement dated November 20, 2024, among PPA Buyer, Limited Assignee and the Custodian (the “**Custody Agreement**”)) to pay into the custodial account specified in the Custody Agreement (the “**Custodial Account**”) for Assigned Product delivered in each Month of the Assignment Period at the “Day-Ahead Average Price” as defined below (“**Floating Price Payments**”). Limited Assignee agrees for the benefit of the PPA Seller to pay the Floating Price Payments into the Custodial Account, and Limited Assignee's payment obligations under this Agreement are limited to making such payments into the Custodial Account, for application as provided in the Custody Agreement. PPA Buyer and PPA Seller each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by Limited Assignee shall not entitle (i) PPA Seller for payments in excess of the [Contract Price] for Assigned Product delivered hereunder or (ii) PPA Buyer to pay less than the [Contract Price] for Assigned Product delivered hereunder. PPA Buyer and Limited Assignee each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by Limited Assignee shall not entitle (i) Limited Assignee to any payments from PPA Seller or (ii) affect the Custodian's obligation to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA. At all times the PPA Buyer shall remain obligated for the payment of all amounts owing under the terms of the PPA including the Monthly Gross Amount under each invoice.

“Day-Ahead Average Price” means (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month. As used in this definition, “Pricing Interval” means the unit of time for which [\_\_\_\_\_] establishes a separate price. As used in this definition “Day-Ahead Market Price” means the Day Ahead Market or Locational Marginal Price for [\_\_\_\_\_] for each applicable hour as published by [\_\_\_\_\_] , or as such price may be corrected or revised from time to time by [\_\_\_\_\_] in accordance with its rules. For the avoidance of doubt, the Day-Ahead Average Price can be a negative number.

## **Appendix 2**

### **FINANCING ENTITY Notice Information**

**[To be completed before signing.]**

**Appendix 3**  
**Copy of PPA**  
**[To be attached.]**

Signature Page to Limited Assignment Agreement





# ITEM 13

## ATTACHMENT B

## SOLAR DEVELOPMENT FRAMEWORK AGREEMENT

This SOLAR DEVELOPMENT FRAMEWORK AGREEMENT (the “**Agreement**”) is entered into this [] day of January, 2025 (“**Effective Date**”) by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**Buyer**” or “**SDCP**”), and LUMINIA CA DEVCO I, LLC, a limited liability company organized under the laws of California (“**Seller**”). Buyer and Seller may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

Unless otherwise defined in this Agreement, capitalized terms have the meanings set out in the Form PPA (as defined below).

### RECITALS

**WHEREAS**, Seller is developing a portfolio of solar photovoltaic electricity generating Facilities, as identified in Exhibit A, in San Diego County, California with a total capacity not to exceed 3.74 MW AC (“**Portfolio Expected Capacity**”);

**WHEREAS**, Seller desires to sell, and Buyer desires to purchase, the Product produced by each of these Facilities;

**WHEREAS**, to effect the purchase of Product from these Facilities, the Parties will execute a power purchase agreement substantially in the form of Renewable Power Purchase Agreement set forth as Exhibit B (“**Form PPA**”) for each Facility in the portfolio; and

**WHEREAS**, this Agreement governs the Parties’ commitment to develop the Facilities prior to December 31, 2025.

**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. PPA Execution.

Concurrently with the execution of this Agreement, the Parties will execute a PPA for each of the Facilities.

#### II. Facility Substitutions.

Prior to October 31, 2025, Seller may, with the prior written consent of Buyer, replace any or all of the Facilities with one or more substitute facilities. Seller shall provide Notice to Buyer of its request to replace the Facility no later than twenty-eight days prior to a regularly scheduled meeting of the Board of Directors of SDGP (“**SDGP BOD**”) meeting and provide a detailed description of the reason for the substitution, and detailed description of the proposed substitute facility(ies), including location, size, and project development information. Any substitute facility

must be a solar-only facility to be interconnected to the San Diego Gas & Electric Company distribution network, within San Diego County, and cannot result in a portfolio of power purchase agreements executed pursuant to this Agreement that would exceed the Portfolio Expected Capacity.

Buyer will have not more than 10 Business Days to assess the Seller's proposed substitution. If Buyer consents to such substitution, such consent not to be unreasonably withheld, conditioned or delayed, the Parties will mutually agree upon one or more power purchase agreement ("PPA") substantially in the form of the Form PPA for the substitute facility(ies) (other than project-specific information for the substitute facility) within 5 Business Days of Buyer's notice of consent to Seller, and if SDCP BOD approval is required pursuant to Buyer's Energy Risk Management Policy, Buyer shall forward the proposed PPA(s) for the substitute facility(ies) to the SDCP BOD for consideration. If the SDCP BOD approves the substitute facility(ies) ("**Approved Substitute Facility(ies)**") the Approved Substitute Facility(ies) will replace the original Facility ("**Replaced Facility**") on Exhibit A and the PPA for the Replaced Facility shall be terminated with no further action by the Parties. Seller agrees that, if SDCP BOD approval is required, Buyer will not be obligated to enter into a PPA for the substitute facility(ies) unless and until the PPA(s) have been submitted for, and has received, approval from the SDCP BOD and is fully executed by the Parties thereto.

III. Posting of Development Security.

To secure its obligations under this Agreement, within thirty (30) days of the Effective Date Seller shall deliver Development Security in the amount [REDACTED]. The Parties intend for the Development Security posted under this Agreement to be applied to each of the PPAs (on a pro rata basis) as of January 1, 2026.

IV. Failure to Reach Portfolio Expected Capacity.

If, at the end of the Term of this Agreement, the aggregate Guaranteed Capacity under the PPA(s) executed pursuant to this Agreement ("**Portfolio Contracted Capacity**") is less than the Portfolio Expected Capacity, Buyer shall [REDACTED]

V. Term; Termination Rights.

A. Term. The "**Term**" of this Agreement shall commence on the Effective Date and continue through December 31, 2025. Both Parties may mutually agree to extend the Term for successive thirty (30) calendar day periods to allow additional time as necessary to effectuate the purposes of this Agreement. [REDACTED]

B. [REDACTED]

VI. 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, provided, however, that Seller may assign this Agreement to an Affiliate without obtaining such consent. 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.

VII. Notices.

All notices required under this Agreement shall be in writing and will be treated as having been given when: (a) delivered personally; (b) sent by commercial overnight courier with written verification of receipt; (c) mailed postage prepaid by certified or registered mail, return receipt requested; or (d) sent by electronic mail ("email"), to the Party to be notified, at the address set forth below, or at such other place of business which the other Party has been notified of in accordance with the provisions of this Section VII. 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:

**Seller:** LUMINIA CA DEVCO I, LLC  
 4445 Eastgate Mall, Suite 200  
 San Diego, CA 92121  
 Attn: David Field, Chief Executive Officer  
 Phone: (858) 922-4555  
 Email: [dfield@luminia.io](mailto:dfield@luminia.io)

**Buyer:** San Diego Community Power  
 PO Box 12716  
 San Diego, CA 92112  
 Attn: Byron Vosburg, Chief Commercial Officer  
 Phone: (619) 880-6545  
 Email: [bvosburg@sdcommunitypower.org](mailto:bvosburg@sdcommunitypower.org)

VIII. 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.

IX. 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.

X. Governing Law & Venue; Jury Trial Waiver.

This Agreement shall be interpreted, governed by, construed under and enforced in accordance with the laws of the State of California without regard for any applicable principles of conflicts of laws. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

XI. 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. [REDACTED]

[REDACTED] This limitation of liability applies to all claims, whether based on contract, tort, or any other legal theory.

XII. Entire Agreement.

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

*[Signatures Follow on Next Page.]*

**Execution Draft**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set opposite their signatures.

SAN DIEGO COMMUNITY POWER, a  
California joint powers authority

Date: \_\_\_\_\_

By: \_\_\_\_\_

LUMINIA CA DEVCO I, LLC, a California  
limited liability company

Date: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT A****EXPECTED GENERATING FACILITIES**

<b>Project Type</b>	<b>Intersection</b>	<b>APN</b>	<b>Longitude and Latitude</b>	<b>Jurisdiction</b>	<b>Expected Size (MW)</b>	<b>Guaranteed Commercial Operation Date</b>
Rooftop Solar	Harvest Rd & Otay Mesa Rd	6462408300	32.568960, 116.946631	County of San Diego	1.52	03/31/2027
Rooftop Solar	Fairve St & 4 <sup>th</sup> Ave	6290404300	32.592253, 117.069448	City of Chula Vista	0.52	03/31/2027
Rooftop Solar	Fairve St & 4 <sup>th</sup> Ave	6290404200	32.592282, 117.071005	City of Chula Vista	0.52	03/31/2027
Rooftop Solar	Mesamint St & Thornmint Rd	6782922900	33.016632, 117.106306	City of San Diego	1.18	03/31/2027



**EXHIBIT B**

**FORM OF RENEWABLE POWER PURCHASE AGREEMENT**

*[See attached.]*

**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 14**

---

**TO:** Board of Directors

**FROM:** Byron Vosburg, Chief Commercial Officer  
Morgan Adam, Senior Local Development Manager

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Approval of Power Purchase Agreement with Luminia CA DevCo 4, LLC

**DATE:** January 23, 2025

---

**RECOMMENDATION:**

Approve Power Purchase Agreement, in substantially final form, with Luminia CA DevCo 4, LLC, for 1.7 MW of rooftop and carport canopy photovoltaic (PV) generation for twenty years and authorize the Chief Executive Officer to execute the agreement.

**BACKGROUND:**

As Community Power strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) of at least 10 years in duration will become integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that Community Power signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which Community Power can build its power supply portfolio while also providing power supply cost certainty around which Community Power can develop its pro forma financial model.

Supplemental to Community Power's efforts to secure more long-term PPAs, Community Power additionally strives to procure an increasing amount of its power supply from renewable resources that are local to San Diego County and that are smaller, non-utility scale projects, typically interconnected to distribution circuits closer to where Community Power loads are located. One of the ways that Community Power works to meet these local distributed energy resource (DER) procurement goals is through open solicitations, one of which was Community Power's Solar Advantage Program solicitation, which closed in February of 2024, and which was the first solicitation that Community Power ran

as a Program Administrator of the California Public Utilities Commission's (CPUC) DAC-GT program.

By way of background, the Solar Advantage program is one of three CPUC programs designed to increase renewable energy generation and alternatives among residential customers in disadvantaged communities (DACs). The DAC-GT program enables California Alternate Rates for Energy (CARE) and Family Electric Rate Assistance Program (FERA) customers without access to owning a solar project to power their homes with 100% renewable energy at a 20% discount from their current rate. Community Power has an allocation of 20.16 MW for DAC-GT and is estimated to serve nearly nine thousand residential customers in DACs. Projects that are approved through this program will not only benefit low-income customers in Community Power's territory through bill discounts but will also be partially subsidized for above market procurement costs through CPUC program funding.

In August of 2024, the Energy Contract Working Group, approved the shortlisting of a Solar Advantage PPA offer submitted by local San Diego based developer, Luminia LLC. The proposed PPA with Luminia CA DevCo 4, LLC (subsidiary of Luminia LLC) is for energy and renewable attributes generated by a 1.7 MW PV facility that will generate approximately 3,600 MWh of energy in its first year of operation and will provide Community Power renewable attributes over a 20-year term. Community Power has reached PPA terms mutually agreeable to both parties and consistent with the program requirements of the CPUC.

## **ANALYSIS AND DISCUSSION:**

Staff and outside procurement counsel at Keyes & Fox negotiated the attached PPA for the purchase of renewable energy from a solar project to be developed at a retail center located in Chula Vista, CA in San Diego County.

### **PPA Contract Overview**

- Project:
  - 1.7 MW Solar Photovoltaic generation (rooftop and carport canopy)
- Project location: Retail center, Chula Vista, San Diego County, CA
- Contract term: 20 years
- Guaranteed Commercial Operation Date: June 30, 2027
- Expected annual energy production: Approximately 3,600 MWh (equivalent power for approximately 350 homes)
- Energy price: Fixed energy price applicable to the full term of the agreement
- No credit or collateral obligations for Community Power
- Community Power would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones

## Community Benefits

- Over \$1.75 MM of property rents and improvements over the term of the agreement
- Over \$1 MM in local labor wages and salaries during the construction phases of project
- Developer commitment to use local labor, prevailing wage, and hiring from San Diego-based apprenticeship programs
- Developer commitment to work with shopping center owner to help with community outreach including on-site displays and organizing educational days, in coordination and collaboration with the City of Chula Vista

The project's value to Community Power's customers and further diversification of Community Power's power portfolio warrants consideration of the PPA. Community Power staff recommends approving this PPA due to the project's anticipated benefits to the community, particularly for low-income residents residing in disadvantaged communities who will see direct savings to their electricity bills, as well as the project's role in helping to meet California's need for significant development of reliable, renewable energy generation capacity. The fact that this distributed generation (DG) project is sited on previously disturbed property of rooftops and in parking lots also spares development on property that could otherwise be utilized for other purposes – one of the reasons why Community Power is committed to including these types of infill projects to our portfolio.

The fixed energy pricing of the PPA is confidential. It should be noted that as a project under CPUC's DAC-GT program, Community Power will be compensated by the CPUC for any procurement costs associated with this PPA that are considered above market, mitigating any impact to Community Power ratepayers, as well as the associated bill discounts that are offered to the benefiting low-income residential customer in Community Power service territory.

This project would constitute the first PPA secured under Community Power's Solar Advantage Program, making use of allocated CPUC funding as a Program Administrator of the statewide DAC-GT program. Finally, this PPA would be among a growing pool of projects that demonstrate Community Power's commitment to local, distributed renewable resources as a vital part of Community Power's power portfolio. As such, staff recommends approving the PPA to allow the project to move forward with development.

## **COMMITTEE REVIEW:**

The Energy Contract Working Group (ECWG) recommended staff to move forward in negotiations of the PPA on August 6, 2024.

**FISCAL IMPACT:**

The competitive energy pricing of the PPA is confidential, but the long-term purchase of renewable energy will provide Community Power with significant value and cost certainty over the term of this PPA. Additionally, Community Power is compensated annually for above-market costs under this PPA by the CPUC through its DAC-GT program.

**ATTACHMENTS:**

Attachment A: Renewable Power Purchase Agreement with Luminia CA DevCo 4, LLC.

# ITEM 14

# ATTACHMENT A

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**RENEWABLE POWER PURCHASE AGREEMENT**

**COVER SHEET**

**Seller:** Luminia CA DevCo 4, LLC, a California limited liability company (“**Seller**”)

**Buyer:** San Diego Community Power, a California joint powers authority (“**Buyer**”)

**Description of Facility:** A 1750 kW solar photovoltaic electricity generating facility located in San Diego County, in the State of California, as further described in Exhibit A.

**Milestones:**

<b>Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	12/31/2025
<b>CEC Pre-Certification Obtained</b>	12/30/2026
<b>Applications for all federal, state and local discretionary permits submitted and accepted as complete by the issuing agency (the “Permitting Submission Milestone”)</b>	05/30/2026
<b>Conditional Use Permit and other discretionary permits obtained</b>	N/A
<b>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</b>	10/31/2025
<b>Executed Interconnection Agreement</b>	03/31/2026
<b>Financial Close</b>	12/31/2026
<b>Major Equipment procured</b>	06/30/2026
<b>Expected Construction Start Date</b>	07/30/2026
<b>Initial Synchronization</b>	11/30/2026
<b>Expected Network Upgrades completed</b>	03/31/2027
<b>Expected Commercial Operation Date</b>	06/30/2027
<b>Guaranteed Commercial Operation Date</b>	06/30/2027

**Delivery Term:** 20 Contract Years.

**Expected Energy:**

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<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	3488
2	3463
3	3438
4	3413
5	3389
6	3365
7	3341
8	3317
9	3293
10	3269
11	3246
12	3223
13	3200
14	3177
15	3154
16	3131
17	3109
18	3087
19	3065
20	3043

**Guaranteed Capacity:** 1.75 MW-AC of Facility capacity

**Dedicated Interconnection Capacity:** 1.75 MW

**Contract Price**



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Contract Year	Contract Price
1-20	[REDACTED] (flat) with no escalation

**Product:**

- ☒ Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Ancillary Services
- ☒ Capacity Attributes (select options below as applicable)
  - ☒ Energy Only Status
  - ☐ Full Capacity Deliverability Status
- ☒ Any other existing products and products that may be developed or evolve from time to time during the Contract Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and at no additional cost to Seller

**Metering Arrangement:** SC Metered Entity

**Scheduling Coordinator:** Buyer/Buyer's agent

**Security:**

Development Security: [REDACTED]

Performance Security: [REDACTED]

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of January \_\_\_\_, 2025 the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

### ARTICLE 1 DEFINITIONS

**1.1 Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12(e).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Approval Application**” has the meaning set forth in Section 2.1(b).

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automated Dispatches**” has the meaning set forth in Section 6.1(b).

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO

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Tariff.

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in kW, that is mechanically available to generate Energy.

“**Bankrupt**” or **Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“**Bid**” has the meaning as set forth in the CAISO Tariff.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time (PPT).

“**Buyer**” means San Diego Community Power, a California joint powers authority.

“**Buyer Bid Curtailment**” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Energy than the full amount of Energy forecasted in accordance with Section 4.5 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Energy, including where Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the kW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

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**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce Delivered Energy by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Delivered Energy pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Buyer Default”** means a failure by Buyer to perform Buyer’s obligations hereunder and includes an Event of Default of Buyer.

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 16.1(a).

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

**“CAISO”** means the California Independent System Operator Corporation, or any successor entity performing similar functions.

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Delivered Energy delivered to or from the Delivery Point.

**“CAISO Charges Invoice”** has the meaning set forth in Exhibit D.

**“CAISO Grid”** has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

**“CAISO Operating Order”** means the Operating Instruction or Dispatch Instruction as defined in the CAISO Tariff.

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

**“Capacity Damages”** has the meaning set forth in Exhibit B.

**“CEC”** means the California Energy Commission, or any successor agency performing similar statutory functions.



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**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Delivered Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

**“CEC Precertification”** means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

**“CEQA”** means the California Environmental Quality Act, as amended or supplemented from time to time.

**“Change in Tax Law”** means (i) any change in or amendment to any Renewable Energy Incentives, (ii) issuance, promulgation or change in, or of, any temporary, proposed, or final Treasury Regulations promulgated under the Code with respect to any Renewable Energy Incentives, or (iii) notice, announcement, court decision, revenue ruling, revenue procedure, or other official guidance published in the Internal Revenue Bulletin that applies, advances, or articulates a new or different interpretation or analysis of any Renewable Energy Incentives.

**“Change of Control”** means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

**“COD Certificate”** has the meaning set forth in Exhibit B.

**“Code”** means the U.S. Internal Revenue Code, as amended.

**“Commercial Operation”** has the meaning set forth in Exhibit B.

**“Commercial Operation Date”** or **“COD”** has the meaning set forth in Exhibit B.

**“Commercial Operation Delay Damages”** means [REDACTED]

**“Communications Protocols”** means the protocols developed by the Parties pursuant to Section 4.5(d) that involve procedures, software, equipment, and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

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**“Compliance Actions”** has the meaning set forth in Section 3.12(c).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.12(b).

**“Confidential Information”** has the meaning set forth in Section 18.1.

**“Construction Start”** has the meaning set forth in Exhibit B.

**“Contract Price”** has the meaning set forth on the Cover Sheet.

**“Contract Term”** has the meaning set forth in Section 2.1.

**“Contract Year”** means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

**“Costs”** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

**“Cover Sheet”** means the cover sheet to this Agreement, which is incorporated into this Agreement.

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

**“CPUC”** means the California Public Utilities Commission or any successor agency performing similar statutory functions.

**“CPUC Approval”** means a final and non-appealable order, decision, or disposition of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer’s administration of this Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC order, decision, or disposition containing such findings becomes final and non-appealable.

**“CPUC Master Resource Database”** means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy capacity to load serving entities.

**“Credit Rating”** means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

**“Cure Plan”** has the meaning set forth in Section 11.1(b)(vi).

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**“Curtailed Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Distribution Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Distribution Provider’s electric system integrity or the integrity of other systems to which the Distribution Provider is connected;

(c) a curtailment ordered by CAISO or the Distribution Provider due to scheduled or unscheduled maintenance on the Distribution Provider’s distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Distribution Provider.

**“Curtailed Period”** means the period of time, as measured using current Settlement Intervals, during which Energy from the Facility is reduced pursuant to a Curtailed Order; *provided*, the Curtailed Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**“Damage Payment”** means the amount to be paid by Seller to Buyer for a Seller default prior to the Commercial Operation Date in a dollar amount set forth in Section 11.3(a).

**“Day-Ahead Market”** has the meaning set forth in the CAISO Tariff.

**“Day-Ahead Schedule”** has the meaning set forth in the CAISO Tariff.

**“Dedicated Interconnection Capacity”** means the maximum instantaneous amount of Energy that is permitted to be delivered by the Facility to the Delivery Point under Seller’s Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet.

**“Deemed Delivered Energy”** means (a) the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailed Period, which amount shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer Curtailed Period, less (b) the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailed Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

**“Defaulting Party”** has the meaning set forth in Section 11.1(a).

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**“Deficient Month”** has the meaning set forth in Section 4.8(e).

**“Delivered Energy”** means for each hour, the electric Energy generated by the Facility, net of Electrical Losses and Station Use, and delivered to the Delivery Point.

**“Delivery Point”** has the meaning set forth in Exhibit A.

**“Delivery Term”** shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

**“Development Cure Period”** has the meaning set forth in Exhibit B.

**“Development Security”** means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

**“Disadvantaged Communities”** or **“DAC”** has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 4.0 (or any successor version) as among the top twenty-five percent (25%) of census tracts statewide, plus the census tracts in the highest five percent (5%) of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

**“DAC-GT”** means the Disadvantaged Communities Green Tariff program set forth in Assembly Bill 327 and established by the CPUC in Section 18-06-027.

**“Disclosing Party”** has the meaning set forth in Section 18.2.

**“Distribution Provider”** means any entity or entities transmitting or transporting the Delivered Energy on behalf of Seller or Buyer to or from the Delivery Point, but excluding Seller or any Seller’s Affiliate responsible for operating any gen-tie line to any point of interconnection to a Distribution Provider’s transmission system or distribution system. For purposes of this Agreement, the Distribution Provider is set forth in Exhibit A.

**“Distribution System”** means the distribution facilities now or hereafter in existence which provide energy distribution service downstream from the Delivery Point.

**“Early Termination Date”** has the meaning set forth in Section 11.2(a).

**“Effective Date”** has the meaning set forth in the Preamble.

**“Electrical Losses”** means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission, distribution, or transformation losses (a) between the Facility Metering Point and the Delivery Point associated with delivery of Delivered Energy.

**“Eligible Renewable Energy Resource”** has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

**“Emission Reduction Credits”** or **“ERCs”** means emission reductions that have been authorized by a local air pollution control district pursuant to California Division 26 Air Resources;

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Health and Safety Code Sections 40709 and 40709.5, whereby a district has established a system by which all reductions in the emission of air contaminants that are to be used to offset certain future increases in the emission of air contaminants shall be banked prior to use to offset future increases in emissions.

**“Energy”** means alternating current electrical energy measured in MWh.

**“Energy Management System”** or **“EMS”** means the Facility’s energy management system.

**“Energy Supply Bid”** has the meaning set forth in the CAISO Tariff.

**“Environmental Costs”** means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Facility, and the Facility’s compliance with all applicable environmental laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, the costs of all Emission Reduction Credits or Marketable Emission Trading Credits required by any applicable environmental laws, rules, regulations, and permits to operate the Facility, and the costs associated with the disposal and clean-up of Hazardous Substances introduced to the Site, and the decontamination or remediation, on or off the Site, necessitated by the introduction of such Hazardous Substances on the Site.

**“Event of Default”** has the meaning set forth in Section 11.1.

**“Excess MWh”** has the meaning set forth in Exhibit C.

**“Exercise Period”** has the meaning set forth in Section 14.6(c).

**“Excused Event”** has the meaning set forth in Exhibit P.

**“Expansion Project”** has the meaning set forth in Section 14.6(a).

**“Expected Commercial Operation Date”** is the date by which Seller reasonably expects to achieve Commercial Operation.

**“Expected Construction Start Date”** means the date set forth on the Cover Sheet.

**“Expected Energy”** means the quantity of Delivered Energy that Seller expects to be able to deliver to Buyer during each Contract Year or other time period in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

**“Facility”** means the generating facility described on the Cover Sheet and in Exhibit A, located at the Site, and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point, but excluding any Shared Facilities.

**“Facility Meter”** means the CAISO Approved Meter, along with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Delivered Energy delivered to the Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. The Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

**“Facility Metering Point”** means the location or locations of the Facility Meter shown on Exhibit O.

**“FERC”** means the Federal Energy Regulatory Commission, or any successor government agency.

**“Financial Close”** means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller's owner(s).

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Delivered Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Full Capacity Deliverability Status”** has the meaning set forth in the CAISO Tariff.

**“Future Environmental Attributes”** shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.



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**“Gains”** means, with respect to any Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, , which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement, and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

**“GEP Damages”** has the meaning set forth in Section 4.7.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Delivered Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) Emission Reduction Credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse

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gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Guaranteed Commercial Operation Date”** means the date set forth on the Cover Sheet, as such date may be extended pursuant to Exhibit B.

**“Guaranteed Energy Production”** means an amount of Adjusted Energy Production, as measured in MWh, equal to eighty-five percent (85%) of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

**“Hazardous Substance”** means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

**“Imbalance Energy”** means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

**“Imbalance Reserves”** has the meaning set forth in the CAISO Tariff.

**“Indemnifiable Loss(es)”** has the meaning set forth in Section 16.1(a).

**“Indemnified Party”** has the meaning set forth in Section 16.1(a).

**“Indemnifying Party”** has the meaning set forth in Section 16.1(a).

**“Initial Synchronization”** means the commencement of Trial Operations (as defined in the CAISO Tariff).

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in kW AC at the Delivery Point (i.e., measured at the Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation (up to but not in excess of the



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Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement(s) entered into by Seller or Seller’s Affiliate pursuant to which the Facility will be interconnected with the Distribution System, providing for interconnection capacity available or allocable to the Facility at the Interconnection Point that is no less than the Dedicated Interconnection Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Distribution System in accordance with the Interconnection Agreement.

**“Interconnection Point”** means the point at which Seller’s Interconnection Facilities interconnect with the Distribution System pursuant to the Interconnection Agreement, which point is identified in Exhibit A.

**“Interest Rate”** has the meaning set forth in Section 8.2.

**“Investment Grade Credit Rating”** means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

**“ITC”** means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

**“Joint Powers Act”** means the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500 et seq.).

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated October 1, 2019, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

**“Law”** means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

**“Lender”** means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing Interest Rate

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or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

**“Licensed Professional Engineer”** means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

**“Limited Assignee”** has the meaning set forth in Section 14.4.

**“Local RFO Projects”** means the renewable energy projects, including the Facility, that are subject to power purchase agreements between the Parties resulting from Seller’s response to Buyer’s request for offers titled “San Diego Community Power 2023 Request for Offers for Local Distributed Projects”.

**“Locational Marginal Price”** or **“LMP”** has the meaning set forth in the CAISO Tariff.

**“Losses”** means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, and Renewable Energy Incentives.

**“Lost Output”** means the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to Force Majeure Events, Curtailment Periods, System Emergencies, or Buyer Default. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated in accordance with the definition thereof.

**“Marketable Emission Trading Credits”** means emissions trading credits or units pursuant to the requirements of California Division 26 Air Resources; Health & Safety Code

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Section 39616 and Section 40440.2 for market-based incentive programs such as the South Coast Air Quality Management District's Regional Clean Air Incentives Market, also known as RECLAIM, and allowances of sulfur dioxide trading credits as required under Title IV of the Federal Clean Air Act (42 U.S.C. § 7651b (a) to (f)).

**“Master File”** has the meaning set forth in the CAISO Tariff.

**“Material Terms”** has the meaning set forth in Section 14.5(b).

**“Meter Service Agreement”** means “Meter Service Agreement for CAISO Metered Entities” or “Meter Service Agreement for Scheduling Coordinators”, as applicable, as each are defined in the CAISO Tariff.

**“Milestones”** means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

**“Monthly Product Payment”** means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for delivered Product, as calculated in accordance with Exhibit C.

**“Moody’s”** means Moody’s Investors Service, Inc.

**“MW”** means megawatts in alternating current, unless expressly stated in terms of direct current.

**“MWh”** means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility’s PNode is less than Zero dollars (\$0).

**“Negative LMP Costs”** has the meaning set forth in Exhibit C.

**“NERC”** means the North American Electric Reliability Corporation or any successor entity performing similar functions.

**“Network Upgrades”** means collectively Delivery Network Upgrades and Reliability Network Upgrades.

**“Non-Defaulting Party”** has the meaning set forth in Section 11.2.

**“Notice”** shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

**“Outage Schedule”** has the meaning set forth in Section 4.6(a)(i).

**“Participating Generator Agreement”** has the meaning set forth in the CAISO Tariff.

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**“Party”** or **“Parties”** has the meaning set forth in the Preamble.

**“Performance Measurement Period”** means each two (2) consecutive Contract Year period during the Delivery Term so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

**“Performance Security”** means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

**“Permitted Transferee”** means (a) any Person that is reasonably acceptable to Buyer, or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(i) A Tangible Net Worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, or Baa3 from Moody’s; and

(ii) At least three (3) years of experience in the ownership and operations of facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

**“Person”** means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

**“Planned Outage”** means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

**“PMAX”** means the applicable CAISO-certified maximum operating level of the Facility.

**“PNode”** has the meaning set forth in the CAISO Tariff.

**“Portfolio”** means the portfolio of electrical energy generating, electrical energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

**“Portfolio Content Category 1”** or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

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Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Financing”** means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

**“Portfolio Financing Entity”** means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

**“Prevailing Wage Requirement”** has the meaning set forth in Section 13.4.

**“Product”** has the meaning set forth on the Cover Sheet.

**“Progress Report”** means a progress report including the items set forth in Exhibit E.

**“Project PPA”** has the meaning set forth in Section 14.6(b).

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, solar generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable safety and reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

**“Real-Time Market”** has the meaning set forth in the CAISO Tariff.

**“Receiving Party”** has the meaning set forth in Section 18.2.

**“Recurring Certificate Transfers”** has the meaning set forth in Section 4.8(a).

**“Reliability Network Upgrades”** has the meaning set forth in the CAISO Tariff.

**“Remedial Action Plan”** has the meaning set forth in Section 2.4.

**“Renewable Energy Credit”** has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

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**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax Credits or other Tax benefits associated with the construction, ownership, or production of Product from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to ownership or operation of the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

**“Replacement Energy”** has the meaning set forth in Exhibit G.

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

**“Replacement Product”** has the meaning set forth in Exhibit G.

**“Requested Confidential Information”** has the meaning set forth in Section 18.2.

**“Right of First Refusal”** or **“ROFR”** has the meaning set forth in Section 14.6(a).

**“ROFR Offer”** has the meaning set forth in Section 14.6(b).

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global, Inc.) or its successor.

**“SC Metered Entity”** has the meaning of a “Scheduling Coordinator Metered Entity” as defined in the CAISO Tariff.

**“SCADA Systems”** means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

**“Schedule”** has the meaning set forth in the CAISO Tariff, and **“Scheduled”** and **“Scheduling”** have a corollary meaning.

**“Scheduled Energy”** means the Delivered Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

**“Scheduling Coordinator”** or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

**“Security Interest”** has the meaning set forth in Section 8.9.

**“Self-Schedule”** has the meaning set forth in the CAISO Tariff.

**“Seller”** has the meaning set forth on the Cover Sheet.

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**“Seller’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

**“Settlement Amount”** means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount shall not include consequential, incidental, punitive, exemplary, or indirect or business interruption damages unless such damages are part of a Party’s Gains, Losses or Costs as those terms are explicitly defined herein.

**“Settlement Interval”** has the meaning set forth in the CAISO Tariff.

**“Settlement Period”** has the meaning set forth in the CAISO Tariff.

**“Shared Facilities”** means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy to the Delivery Point from the Facility (which is excluded from Shared Facilities), including the Interconnection Agreement itself, that are used in common with third parties or by Seller.

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at anytime prior to the Expected Construction Start Date; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

**“Site Control”** means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

**“SP-15”** means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

**“SQMD Plan”** has the meaning set forth in the CAISO Tariff.

**“Station Use”** means the Energy that is used within the Facility to power certain lights, motors, temperature control systems, control systems and other ancillary electrical loads that are necessary for operation of the Facility (or as otherwise defined by the retail energy provider and CAISO Tariff).

**“Subsequent Purchaser”** means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

**“Supply Chain Event”** means any delay or failure in Seller’s performance of its obligations hereunder arising out of any of the following, notwithstanding the foreseeability or anticipation thereof at any time: (X) changes in Export and Import Costs or international trade restraints, or (Y) any Import Restriction Action.

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**“Supply Plan”** has the meaning set forth in the CAISO Tariff.

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the Distribution Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

**“Tangible Net Worth”** means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

**“Tax”** or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

**“Tax Credits”** means (a) the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities and/or energy storage facilities and (b) any refundable credit, grant, or other cash payment in lieu of an incentive described in clause (a).

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

**“Termination Payment”** has the meaning set forth in Section 11.3(b).

**“Test Energy”** means Delivered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Distribution Provider informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

**“Test Energy Rate”** has the meaning set forth in Section 3.6.

**“Third-Party Transaction”** has the meaning set forth in Section 14.6(c).

**“Transmission System”** means the transmission facilities operated by the CAISO, now or hereafter in existence.

**“Ultimate Parent”** means \_\_\_\_\_, a [State of organization] [Type of entity].

**“Unplanned Outage”** means a period during which the Facility is not capable of providing service due to the need to maintain or repair a component thereof, which period is not a Planned Outage.

**“Variable Energy Resource”** or **“VER”** has the meaning set forth in the CAISO Tariff.



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“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(d).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

**1.2 Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

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(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

**ARTICLE 2  
TERM; CONDITIONS PRECEDENT**

**2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided, however*, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Within thirty (30) days of the Effective Date or as directed by the CPUC, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval (“Approval Application”). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years

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following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

**2.2 Commercial Operation; Conditions Precedent.** Seller shall provide Notice to Buyer of the Expected Commercial Operation Date at least sixty (60) days in advance of such date. Seller shall provide Notice to Buyer when Seller believes it has provided the required documentation to Buyer and met all the conditions precedent set forth below for achieving Commercial Operation. Buyer shall approve or reject Seller's request for confirmation of Commercial Operation, which approval shall not be unreasonably withheld, conditioned or delayed. If confirmed, Commercial Operation shall be deemed to have occurred as of the date stated in such Notice. Upon Buyer's approval of Seller's achievement of Commercial Operation, Buyer shall provide Seller with written acknowledgement of the Commercial Operation Date.

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO have been executed and delivered and are in full force and effect, and a copy of each such agreement has been delivered to Buyer;

(c) Seller has executed an Interconnection Agreement with the Distribution Provider, which shall be in full force and effect, and a copy of the Interconnection Agreement has been delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility have been obtained and shall be in full force and effect and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(e) Seller has Site Control;

(f) Reserved;

(g) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(h) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, qualified reporting entity service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

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(i) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(j) Insurance requirements for the Facility have been met, with evidence provided in writing to Buyer, in accordance with Section 17.1;

(k) Seller has made available to Buyer's Scheduling Coordinator all real-time telemetry data reasonably necessary for Buyer's Scheduling Coordinator to perform its duties as Buyer's Scheduling Coordinator for the Facility, including the operational data specified in Exhibit L;

(l) The Parties have agreed to a Communications Protocol as set forth in Section 4.5;

(m) Seller has taken all actions and executed all documents and instruments required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator and has full capability to Schedule and dispatch the Facility; and

(n) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(o) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and Commercial Operation Delay Damages.

**2.3 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agrees to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request from Buyer. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.4 Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans

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with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**2.5 Pre-Commercial Operation Actions.** The Parties agree that, in order for Buyer to dispatch the Facility for its Commercial Operation Date, the Parties will have to perform certain of their Delivery Term obligations in advance of the Commercial Operation Date. The Parties shall cooperate with each other in order for Buyer to be able to dispatch the Facility for the Commercial Operation Date.

**ARTICLE 3**  
**PURCHASE AND SALE**

**3.1 Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, (a) Buyer will purchase and receive all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses), and (b) Buyer shall have the exclusive right to the Installed Capacity, as applicable, and all Product associated therewith. Buyer has no obligation to purchase from Seller any Product for which the associated Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order. Seller represents and warrants that it will deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances. Seller shall not substitute or purchase any Energy from any other resource or the market for delivery hereunder except as otherwise provided herein, nor shall Seller sell, assign or otherwise transfer any Product, or any portion thereof, to any third party other than to Buyer or the CAISO pursuant to this Agreement or as otherwise required by Law.

**3.2 Sale of Green Attributes.** Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Delivered Energy and Test Energy, if any, generated by the Facility.

**3.3 Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Delivered Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, except as otherwise set forth in this Agreement, any costs or revenues from such imbalances shall be allocated to the Party that is acting as Scheduling Coordinator for the Facility.

**3.4 Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

**3.5 Future Environmental Attributes.**

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(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

**3.6 Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products, including Green Attributes on an as-available basis; *provided however*, Buyer may consent to, but has no obligation to purchase Test Energy before ninety (90) days prior to the earlier of the Expected COD or the Guaranteed COD. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to one hundred percent (100%) of all net CAISO revenues received by Buyer for the Test Energy (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

**3.7 Reserved.**

**3.8 Reserved.**

**3.9 CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

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**3.10 Reserved.**

**3.11 California Renewables Portfolio Standard.**

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“**ERR**”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(b) The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.12. The term “Project” as used in Section 3.11(a) means the Facility.

(c) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(d) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(e) The term “the contract” as used in Section 3.11(d) means this Agreement.

**3.12 Compliance Expenditure Cap.**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation to Buyer that meets the requirements of the California Renewables Portfolio Standard. The Parties further acknowledge that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) the modification of the description of Green Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to ensure that this Agreement or the Facility is eligible as an ERR and for other benefits under the California Renewables Portfolio Standard; *provided*, Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such

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modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to (A) cause the Facility, the Energy generated by the Facility, or the associated Green Attributes to comply with the California Renewables Portfolio Standard, (B) obtain, maintain, convey or effectuate Buyer's use of any Green Attributes, or (C) a change in WREGIS Operating Rules after the Effective Date increases Seller's costs to comply with its obligations under Section 4.8, then the Parties agree that the maximum aggregate amount of the increase in out-of-pocket costs and expenses that Seller shall be required to bear during the Contract Term to comply with all of such obligations shall be capped at [REDACTED] per MW of Guaranteed Capacity in aggregate over the Contract Term (the "**Compliance Expenditure Cap**").

(c) Any actions required for Seller to comply with its obligations set forth in Section 3.12(b), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(d) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(e) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (i) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted Compliance Costs**"), or (ii) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

(f) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

**3.13 Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) in their sole discretion as set forth in a written agreement executed by the Parties.

**3.14 Buyer's Re-Sale of Product.** Buyer shall have the exclusive right in its sole



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discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the Product. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.14, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

**ARTICLE 4  
OBLIGATIONS AND DELIVERIES**

**4.1 Delivery.**

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and continuing through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Distribution Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Delivered Energy at and after the Delivery Point, including without limitation transmission and distribution costs and transmission and distribution line losses and imbalance charges, except as otherwise set forth in this Agreement. The Delivered Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with Test Energy and the Delivered Energy are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, Seller has not sold such Green Attributes to any other person or entity, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

**4.2 Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Delivered Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

**4.3 Interconnection.** Seller shall be responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Dedicated Interconnection Capacity and (b) Seller shall have

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sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-controlled grid, to fulfill Seller's obligations under the Agreement and to allow Buyer's dispatch rights for the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the foregoing interconnection capacity.

**4.4     Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a)     Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or in such other form as reasonably requested by Buyer.

(b)     Reserved.

(c)     Reserved.

(d)     Reserved.

(e)     Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's SC of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f)     Reserved.

(g)     CAISO Tariff Requirements. The Facility shall participate in and Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol (as such terms are defined in the CAISO Tariff) for the Facility, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

**4.5     Dispatch Down/Curtailment.**

(a)     General. Seller agrees to reduce the amount of Delivered Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility.

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(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. The Parties shall cooperate in good faith to agree upon a Communications Protocol for the Facility at least thirty (30) days prior to the earlier of the Guaranteed Commercial Operation Date or the Expected Commercial Operation Date. Upon request of a Party during the Delivery Term, the Parties shall cooperate in good faith to agree on reasonable changes to the Communications Protocol.

**4.6 Outages.**

(a) Planned Outages.

(i) No later than January 15, April 15, July 15 and October 15 of each Contract Year, and at least sixty (60) days prior to the Commercial Operation Date, Seller shall submit to Buyer Seller's non-binding schedule of proposed Planned Outages ("**Outage Schedule**") for the following twelve (12)-month period in a form reasonably agreed to by Buyer. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall give Notice to Seller of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, accommodate Buyer's requests regarding the timing of any Planned

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Outage. Seller shall deliver to Buyer the final Outage Schedule no later than ten (10) days after receiving Buyer's comments.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller shall have the right, on no less than [REDACTED] advance Notice to Buyer, to propose changes to the Outage Schedule developed pursuant to Section 4.12(a)(i); *provided*, Seller shall schedule all Planned Outages within the time period determined by the CAISO to qualify for an "Approved Maintenance Outage" under the CAISO Tariff and Seller shall reimburse Buyer for any cost Buyer incurs in connection therewith. Buyer may provide comments no later than ten (10) days after receiving Seller's Notice of proposed changes to the Outage Schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(b) During the five-month period from June 1 to October 31 during the Delivery Term, Seller shall not schedule any non-emergency maintenance that reduces the energy generation capability of the Facility, unless (i) such outage is required to avoid an emergency or damage to the Facility or its Interconnection Facilities, [REDACTED]

[REDACTED] (iii) such outage is in connection with Force Majeure events, (iv) such outage is required by Law, or the requirements of CAISO or the Distribution Provider and/or each other applicable Governmental Authority, or (v) the Parties agree otherwise in writing.

(c) Planned Outage Timing. To the extent commercially reasonable, Seller shall schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer.

(d) Notice of Unplanned Outages. Seller shall notify Buyer by telephoning Buyer's Scheduling Coordinator no later than ten (10) minutes following the occurrence of an Unplanned Outage, or if Seller has knowledge that an Unplanned Outage will occur, within twenty (20) minutes of determining that such Unplanned Outage will occur. Seller shall relay outage information to Buyer as required by the CAISO Tariff within twenty (20) minutes of the Unplanned Outage. Seller shall communicate to Buyer the estimated time of return of the Facility as soon as practical after Seller has knowledge thereof.

(e) Inspection. In the event of an Unplanned Outage, Buyer shall have the option to inspect the Facility and all records relating thereto on any Business Day and at a reasonable time and Seller shall reasonably cooperate with Buyer during any such inspection. Buyer shall comply with Seller's safety and security rules and instructions during any inspection and shall not interfere with work on or operation of the Facility.

(f) Reports of Outages. Seller shall promptly prepare and provide to Buyer, all reports of Unplanned Outages or Planned Outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with CAISO requirements or any applicable Laws. Seller shall also report all Unplanned Outages or Planned Outages in the Daily Operating Report.

**4.7 Guaranteed Energy Production**. During each Performance Measurement Period,

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Seller shall deliver to Buyer an amount of Adjusted Energy Production, not including any Excess MWh, equal to no less than the Guaranteed Energy Production. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**GEP Damages**”); *provided*, with the prior consent of Buyer, Seller may provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed XX percent (XX%) of the Expected Energy for the previous Contract Year.

**4.8 WREGIS.** Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy, as applicable, are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates.

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Recurring Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Delivered Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy, for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

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(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; *provided, however*, that such adjustment shall not apply to the extent that Seller (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, or (ii) the CEC modifies its *RPS Eligibility Guidebook* to enable the full amount of Delivered Energy to generate WREGIS Certificates, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the maximum quantity of WREGIS Certificates that can be transferred to Buyer from the Facility in the same calendar month.

**ARTICLE 5\_  
TAXES**

**5.1 Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.

**5.2 Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6  
OPERATION AND MAINTENANCE OF THE FACILITY**

**6.1 Operation and Maintenance of the Facility.**

(a) Seller shall comply with Law and Prudent Operating Practice and be solely responsible for the operation, inspection, maintenance and repair of the Facility, and any portion thereof, the generation and sale of Product, all Environmental Costs and the disposal and recycling of any equipment associated with the Facility, including batteries and solar panels in accordance with applicable Law and Prudent Operating Practices. Seller shall maintain and deliver maintenance and repair records of the Facility to Buyer's scheduling representative upon request.

(b) Seller shall promptly make all necessary repairs to the Facility and the Facility, and any portion thereof, and take all actions necessary in order to provide the Product to Buyer in accordance with the terms of this Agreement.

(c) During the Delivery Term, Seller shall maintain SCADA Systems, communications links, and other equipment necessary to receive automated Dispatch Notices consistent with CAISO protocols and practice ("**Automated Dispatches**"). In the event of the failure or inability of the Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment.

(d) Seller shall maintain a daily operations log for the Facility which shall include but not be limited to information on Energy electricity consumption and efficiency (if applicable), availability, outages, changes in operating status, inspections and any other significant events related to the operation of the Facility. Information maintained pursuant to this Section 6.1(c) shall be provided to Buyer within fifteen (15) days of Buyer's request.

(e) Seller shall maintain and make available to Buyer records, including logbooks, demonstrating that the Facility is operated in accordance with Prudent Operating Practices. Seller shall comply with all reporting requirements and permit on-site audits, investigations, tests and inspections permitted or required under any Prudent Operating Practices.

**6.2 Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to the Delivery Point.

**6.3 Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Distribution Provider, Seller's Affiliates, and/or

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third parties. Seller agrees that any agreements regarding Shared Facilities (a) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, including providing interconnection capacity for the Facility's sole use in an amount not less than the Dedicated Interconnection Capacity, (b) shall provide for separate metering and a separate CAISO Resource ID for the Facility, (c) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs; and (d) shall provide that any curtailment of the full capacity of Shared Facilities that is ordered by Distribution Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities. Seller shall not, and shall not permit any Affiliate to, allocate to other parties a share of the total interconnection capacity under the Interconnection Agreement in excess of an amount equal to the total interconnection capacity under the Interconnection Agreement minus the Dedicated Interconnection Capacity.

**ARTICLE 7  
METERING**

**7.1 Metering.** Seller shall measure the amount of Delivered Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. All Facility Meters will be programmed, operated and maintained pursuant to the applicable CAISO-approved SQMD Plan for the Facility at Seller's cost (including, for avoidance of doubt, reimbursement to Buyer of reasonable and customary costs owed by Buyer to its Scheduling Coordinator for submitting SQMD Plan meter data to the CAISO), throughout the period to which the SQMD Plan applies. Seller shall provide to Buyer a copy of any CAISO-approved SQMD Plan and any modifications thereto and notice of any termination or withdrawal thereof. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for Electrical Losses and Station Use, as applicable, from such meters to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall separately meter all Station Use. Metering shall be consistent with the Metering Diagram set forth as Exhibit O, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) website (or its successor) or directly from the CAISO meter(s) at the Facility, to the extent such meter data and related meters are not the subject of a CAISO-approved SQMD Plan for the Facility.

**7.2 Meter Verification.** Seller shall test the Facility Meter at least annually and more frequently than annually if Buyer or Seller reasonably believe there may be a meter malfunction. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer



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shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

**ARTICLE 8  
INVOICING AND PAYMENT; CREDIT**

**8.1 Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall (a) include records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Delivered Energy ; (ii) Seller's calculation of Deemed Delivered Energy, Lost Output, and Adjusted Energy Production; (iii) the LMP prices at the Delivery Point for each Settlement Period; and (iv) the Contract Price applicable to such Product and Seller's calculation of the Monthly Product Payment due from Buyer, calculated in accordance with Exhibit C; (b) include any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail in accordance with Exhibit N.

**8.2 Payment.** Buyer shall make payment to Seller for Monthly Product Payments by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within [REDACTED] of Buyer's receipt of Seller's invoices; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

**8.3 Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted access to the

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accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars (\$10,000).

**8.4 Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

**8.5 Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

**8.6 Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

**8.7 Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under

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this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

**8.8 Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, and Seller shall within [REDACTED] [REDACTED] after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security; *provided, however*, if Seller has failed to provide Beneficiary with a substitute Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date, Buyer shall have the right to draw on the full amount of the Letter of Credit.

**8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for

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in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

**ARTICLE 9  
NOTICES**

**9.1 Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

**9.2 Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

(a) if sent by United States mail with proper first-class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail;

(b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or

(d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, invoices sent pursuant to Section 8.1 and Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

**ARTICLE 10  
FORCE MAJEURE**

**10.1 Definition.**

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event of the type described in the foregoing clause may include an act of God or the elements, such as flooding, lightning, hail, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic (including the COVID-19 epidemic); pandemics; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, “**Force Majeure Event**” of the type described in the foregoing paragraph does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order, except to the extent such inability is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (viii) events otherwise constituting a Force Majeure Event that prevents Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as a Development Cure Period under this Agreement; or (ix) any action or inaction by any third party, including Distribution Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Reliability Network Upgrades, except to the extent expressly permitted as a Development Cure Period under this Agreement.

**10.2 No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4



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of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Section 4 of Exhibit B, or (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) after all applicable extensions of the Guaranteed Commercial Operation Date and receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

**10.3 Notice of Force Majeure Event.** Within [REDACTED] of the impact of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the Force Majeure Event claim. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

**10.4 Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any further liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

**ARTICLE 11**  
**DEFAULTS; REMEDIES; TERMINATION**

**11.1 Events of Default.** An "Event of Default" shall mean,

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(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default, the occurrence of any of the following (subject to any applicable cure periods):

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(vi), (vii), and (viii), the exclusive remedies for which are set forth in Section 4.9 and Exhibit G and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising best efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, other than Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan within the timeframe set forth in Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

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(iv) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(v) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to (A) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days ("Cure Plan") and (B) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(vi) beginning [REDACTED], in any Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) in such Contract Year is not [REDACTED] of the Expected Energy amount for such Contract Year;

(vii) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) is not [REDACTED] of the Expected Energy amount for such two (2) consecutive Contract Year period;

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(ix) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;



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(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

**11.2 Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance, injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive monetary remedy for any Terminated Transaction and the Event of Default related thereto.

**11.3 Damage Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

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(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the entire amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's Event of Default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal the aggregate of all Settlement Amounts plus any and all other amounts due to or from Seller (as of the Early Termination Date) netted into a single amount. There will be no amount owed to Buyer. Seller shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to Seller's duty to mitigate, Seller shall not have to enter into replacement transactions to establish a Settlement Amount. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment. On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in

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connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

**11.4 Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts, to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

**11.5 Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable shall be determined in accordance with Article 15.

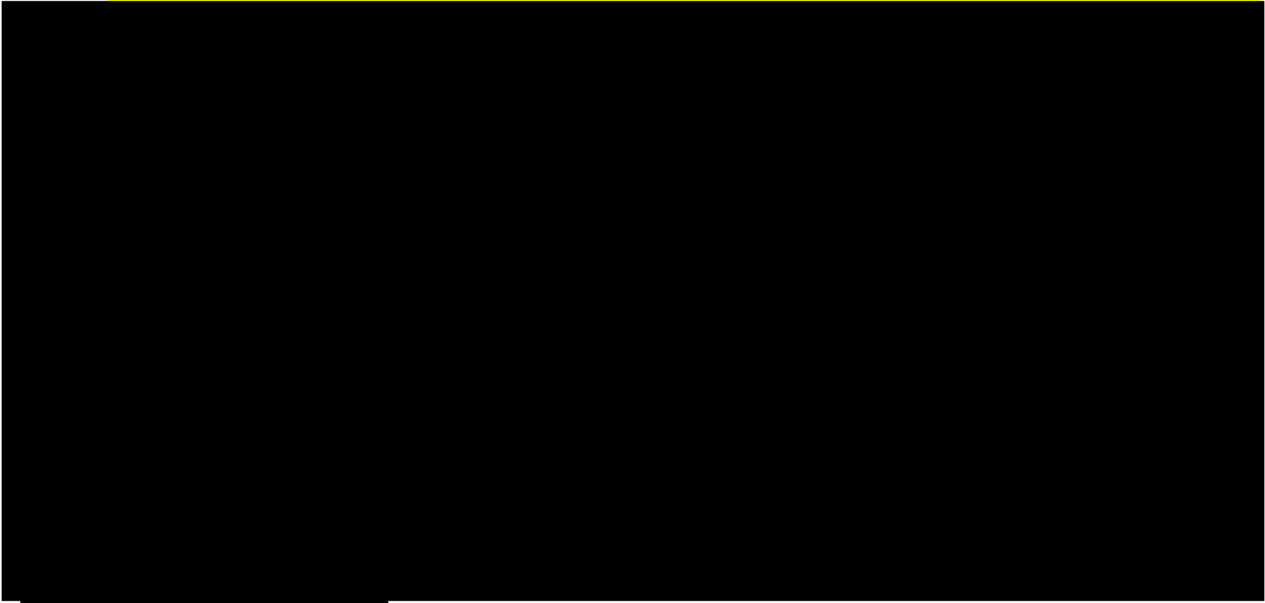
**11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If this Agreement is terminated by either Party prior to the Commercial Operation Date for any reason except due to Buyer's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

**11.7 Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**11.8 Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially

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reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.



**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

**12.1 No Consequential Damages.** EXCEPT TO THE EXTENT (A) PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) PART OF A THIRD-PARTY INDEMNITY CLAIM UNDER ARTICLE 16, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

**12.2 Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2, 11.3, 11.9 AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

**ARTICLE 13  
REPRESENTATIONS AND WARRANTIES; AUTHORITY**

**13.1 Seller's Representations and Warranties** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law

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presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility qualifies as a DAC-GT project pursuant to CPUC Decisions 18-06-27, (i) will be located in and connected electrically to a circuit, load, or substation within San Diego Gas and Electric Company's service territory, and (ii) is located within an eligible DAC in which subscribing customers of Buyer reside. .

(f) Seller shall maintain Site Control throughout the Delivery Term.

(g) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents, if applicable.

**13.2 Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows: Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its

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terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; *provided, however*, that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (California Government Code Section 810 et seq.).

**13.3 General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

**13.5 Prevailing Wage.** Seller shall use commercially reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable Laws, if any ("**Prevailing Wage Requirement**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any applicable labor Laws. In addition, Seller shall use commercially reasonable efforts to:

(a) Use fifty percent (50%) Union labor across all Local RFO Projects;

(b) Hire from San Diego-based apprenticeship programs, with an emphasis on hyper-local programs;

(c) Ensure all sanitation, equipment rental, and waste services are provided by local companies; and

(d) Work with community-based organizations to ensure that all RFPs related to the Facility are posted to local boards and released in appropriate community newsletters.

**13.6 Workforce Development and Supplier Diversity.** Seller acknowledges that Buyer will, from time to time, request voluntary disclosure of Seller's certification status with the CPUC Supplier Clearinghouse, and voluntary disclosure regarding Seller's efforts to work with



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diverse business enterprises, including women, minority, disabled veteran, and lesbian, gay, bisexual, transgender and/or persons with disabilities business enterprises in a form similar to Exhibit S.

**ARTICLE 14  
ASSIGNMENT**

**14.1 General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; *provided*, a Change of Control of Seller shall not require Buyer's consent and will not be subject to Section 14.2 or Section 14.3 if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. The assigning Party shall pay the other Party's reasonable expenses associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by the assigning Party, including without limitation reasonable attorneys' fees.

**14.2 Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement.

**14.3 Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act (California Government Code Section 81000 et seq.) or the regulations thereto, California Section 1090, or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement directly or indirectly to an Affiliate of Seller if, and only if:

(i) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(ii) Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

(b) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to any Person succeeding to all, or substantially all, of the assets of Seller (whether voluntary or by operation of law), if, and only if:



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- (i) The assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(c) Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and confirmed by Buyer.

**14.4 Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; *provided*, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

**14.5 Permitted Assignment by Buyer.** Buyer may make a limited assignment to an entity with an Investment Grade Credit Rating ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to Seller, subject to execution of an assignment agreement between and among Seller, Buyer, and Limited Assignee substantially in the form set forth in Exhibit T, including that the limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering Notice upon not less than thirty (30) days prior to such proposed assignment. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

**14.6 Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity.** Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities with Seller or the Facility (each such future phase or separate renewable energy or energy

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storage project, an “**Expansion Project**”). The requirements of this Section 14.6 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the “**ROFR Offer**”), for Buyer to accept, subject only to finalization and execution of a power purchase agreement for the Expansion Project (the “**Project PPA**”) incorporating the Material Terms of such Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the “**Material Terms**”).

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer’s receipt of the ROFR Offer (the “**Exercise Period**”), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project PPA for the Expansion Project with a third party (the “**Third-Party Transaction**”); provided, that if such Third-Party Transaction is not consummated within twelve (12) months of the date of the Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the Expansion Project without affording Buyer the right of first refusal on the terms and conditions of this Section 14.6.

(d) Notwithstanding any of the above, if the sum of (i) the Delivered Energy and (ii) the generating energy and/or storage energy from the Expansion Project for any Settlement Interval would exceed the Dedicated Interconnection Capacity for such Settlement Interval, then the generating energy and/or storage energy from the Expansion Project shall be curtailed first prior to curtailing the Delivered Energy.

**ARTICLE 15**  
**DISPUTE RESOLUTION**

**15.1 Governing Law; Venue.**

(a) This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. [STC 17].

(b) For avoidance of doubt, although “agreement” is not capitalized in Section 15.1(a), the parties intend for “agreement” to mean this Agreement, and for “party” and “parties” to refer to the Party and Parties as set forth in the preamble to this Agreement.

(c) The Parties agree that any suit, action or other legal proceeding by or against any Party with respect to or arising out of this Agreement shall be brought in the federal or state courts of the State of California sitting in the County of San Diego.

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**15.2 Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to them at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

**15.3 Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

**ARTICLE 16**  
**INDEMNIFICATION**

**16.1 Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement ("**Indemnifiable Losses**").

(b) Seller shall indemnify, defend, and hold harmless Buyer's Indemnified Parties, from any claim, liability, loss, injury or damage arising out of, or in connection with Environmental Costs and any environmental matters associated with the Facility, including the storage, disposal and transportation of Hazardous Substances, or the contamination of land, including but not limited to the Site, with any Hazardous Substances by or on behalf of the Seller or at the Seller's direction or agreement.

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

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**16.2 Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, *provided*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

**ARTICLE 17  
INSURANCE**

**17.1 Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Seller, if it has employees, shall maintain Employers' Liability insurance with limits of not less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall cover liability arising out of [REDACTED]

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Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement and shall name Buyer as additional insured and contain standard cross-liability and severability of interest provisions.

(e) Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of [REDACTED] per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(f) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED]; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Facility; *provided*, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a probable maximum loss amount determined by a firm with experience providing such determinations. Such insurance shall include business interruption coverage in an amount equal to twelve (12) months of expected revenue from this Agreement.

(i) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days' prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and workers' compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

**ARTICLE 18  
CONFIDENTIAL INFORMATION**

**18.1 Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as

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“confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; (iv) information that the recipient independently developed without a violation of this Agreement; and (v) information that is determined by Buyer to be subject to the California Public Records Act.

**18.2 Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the “**Receiving Party**”) from the disclosing Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Receiving Party’s members, employees, lenders or investors, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to (a) comply with any applicable Law, regulation, any exchange, control area or independent system operator rule, an order of a court; or regulatory requirement applicable to the Receiving Party, or (b) in order to enforce this Agreement; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

(b) The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (California Government Code Section 7920 *et seq.*). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

**18.3 Requested Confidential information.** Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer and Buyer’s Indemnified Parties from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer or Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

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**18.4 Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

**18.5 Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are no less stringent than those in this Article 18 to the same extent as if it were a Party. Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

**18.6 Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

**ARTICLE 19  
MISCELLANEOUS**

**19.1 Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

**19.2 Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

**19.3 No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.



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**19.4 No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender and/or Indemnified Party.

**19.5 Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

**19.6 Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Law.

**19.7 Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

**19.8 Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

**19.9 Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**19.10 No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (California Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s



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constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

**19.11 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

**19.12 Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

**19.13 Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**LUMINIA CA DEVCO 4, LLC, a SAN DIEGO COMMUNITY POWER, a**  
**California limited liability company California joint powers authority**

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

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

## **EXHIBIT A**

### **FACILITY DESCRIPTION**

**Project Name:** Chula Vista Retail Center

**Site includes all or some of the following APNs:** 5720104700 & 5720104600

**County:** San Diego

**CEQA Lead Agency:** Not Applicable

**Zip Code:** 91910

**Latitude and Longitude:** 32.629583, -117.086121

**Facility Description:** Rooftop and Canopy Solar PV

**Delivery Point:** Interconnection Point On Site CAISO Meter

**Facility Meter and Metering Points:** See Exhibit O.

**PNode:**<sup>1</sup> MONTGMRY\_6\_N002

**Interconnection Point:** Facility Meter

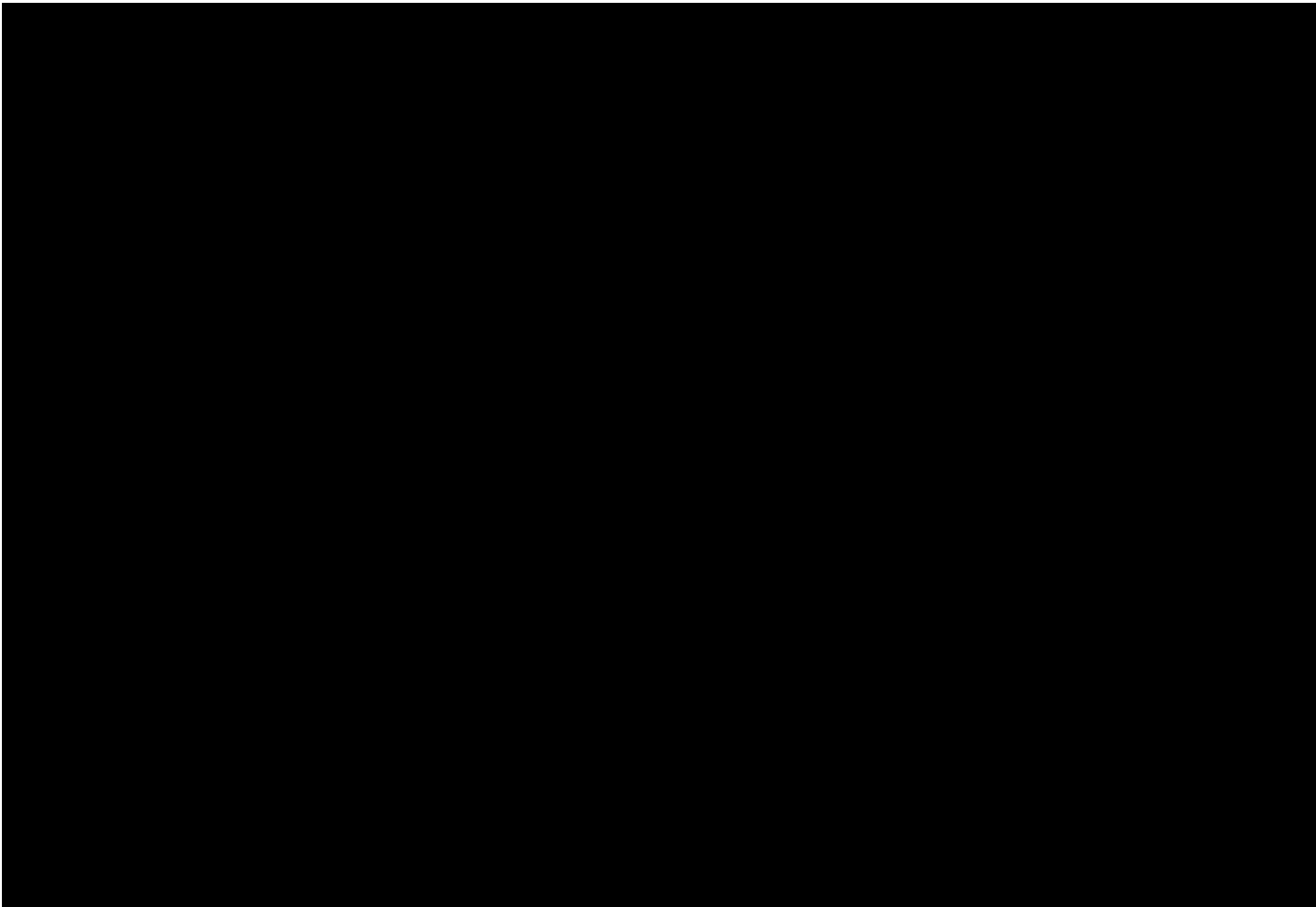
**Distribution Provider:** San Diego Gas and Electric

**Local Capacity Area and Sub-Local Capacity Area:** San Diego-Imperial Valley

**Additional Information:** Site plan provided below.

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<sup>1</sup> If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder to reflect the PNode corresponding to the Facility's Interconnection Point with the CAISO Grid.



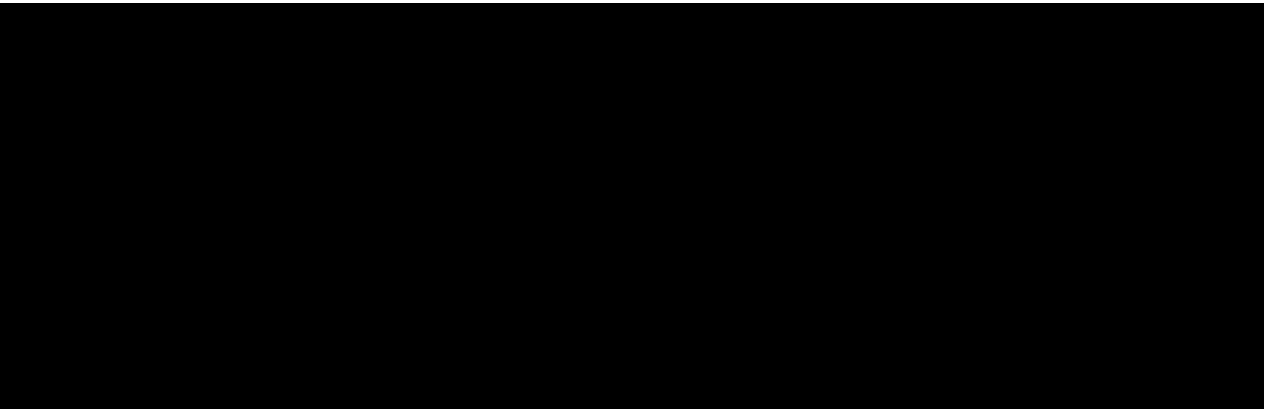
## EXHIBIT B

### MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction Start.**

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

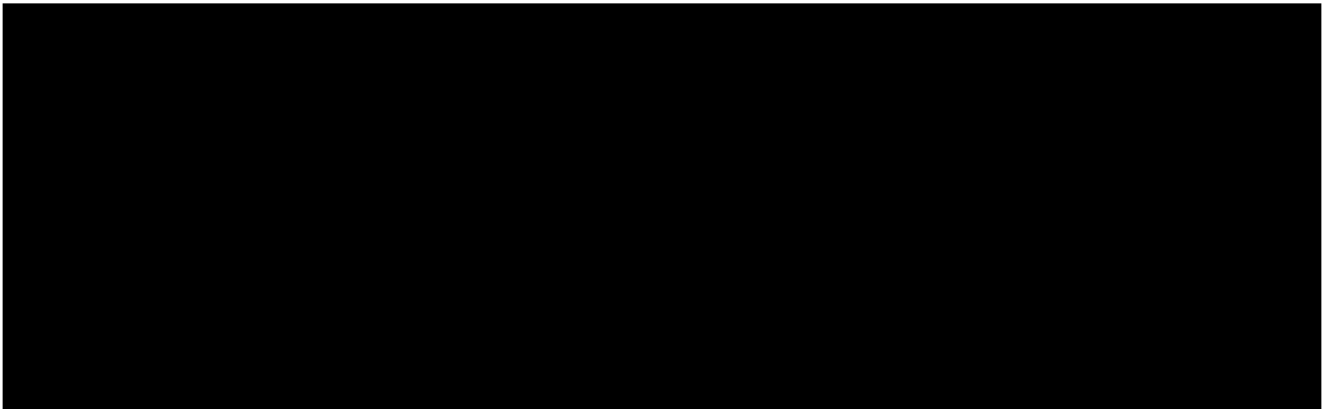


- b. Seller shall cause Commercial Operation to occur no later than the Guaranteed Commercial Operation Date, as such date may be extended (i) pursuant to Section 2(a) of Exhibit B, (ii) by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2(c) of Exhibit B, and/or (iii) a Development Cure Period pursuant to Section 4 of Exhibit B. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- c. In addition to extensions pursuant to a Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation

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Delay Damages in advance to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of [REDACTED] of extensions by such payment of Commercial Operation Delay Damages. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is [REDACTED] prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this this Section 2(c) of Exhibit B.

3. **Termination for Failure to Timely Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates**. The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:



Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed [REDACTED], for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed [REDACTED]. Notwithstanding anything to the contrary, no Development Cure Period extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its

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requirements and deadlines, or (ii) Seller failed to provide requested documentation as provided below. Except as set forth in Section 10.3 regarding Force Majeure Event notice requirements, Seller shall provide prompt written notice to Buyer of a Development Cure Period delay, but in no case more than [REDACTED] after Seller became aware of such delay, except that in the case of a delay occurring within [REDACTED] of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within [REDACTED] of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

**5. Failure to Reach Guaranteed Capacity.**

If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "Capacity Damages" to Buyer, in an amount equal to [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly. Capacity Damages shall not be offset or reduced by the payment of Construction Delay Damages, Commercial Operation Delay Damages, or any other form of liquidated damages under this Agreement.

**EXHIBIT C**  
**COMPENSATION**

Buyer shall compensate Seller for the Product in accordance with this Exhibit C (the “**Monthly Product Payment**”).

(a) Renewable Rate. Buyer shall pay Seller the Contract Price for each MWh of Delivered Energy, plus Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Excess Contract Year Deliveries Over [REDACTED]. If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Delivered Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval, but not less than zero dollars (\$0), or (b) [REDACTED].

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Delivered Energy, in excess of the product of the Installed Capacity *multiplied by* the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“**Negative LMP Costs**”).

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for Delivered Energy or Deemed Delivered Energy during any Curtailment Period.

(e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Renewable Energy Incentives. Except as set forth in [REDACTED] the Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Renewable Energy Incentives, or if any Renewable Energy Incentives expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Renewable Energy Incentives. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Renewable Energy Incentives or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Delivered Energy and Product, shall be effective regardless of whether the sale of Delivered Energy is eligible for, or receives Renewable Energy Incentives during the Contract Term. Notwithstanding the foregoing, if after the Effective Date of this Agreement, the Renewable Energy Incentives are increased from the current credit amount of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt (as applicable) of Test Energy, and the Product at the Delivery Point. Prior to the Initial Synchronization of the Facility, Seller or Seller's designee shall be the Scheduling Coordinator for the Facility. At least thirty (30) days prior to the Initial Synchronization, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, (ii) Seller shall make available to Buyer's Scheduling Coordinator all real-time telemetry data reasonably necessary for Buyer's Scheduling Coordinator to perform its duties as Buyer's Scheduling Coordinator, including the relevant operational data specified in this Exhibit D, Section (i), and (iii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time or other CAISO market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or fax transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs (except as otherwise set forth in this Agreement), and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO Dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. In addition, Seller shall assume all liability and reimburse Buyer for any and all CAISO penalties and Imbalance Energy costs (i) incurred by Buyer resulting from any failure by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to

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perform its duties as Scheduling Coordinator for the Facility), or (ii) to the extent arising as a result of Seller's failure to comply with a timely Curtailment Order if such failure results in incremental costs to Buyer. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices in respect of performance prior to the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template; Master Resource Database. The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the CPUC Master Resource Database and Master Data File. Seller shall provide the data to Buyer that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior

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written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) and CPUC Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

**EXHIBIT E**  
**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. [Prevailing wage reports as required by Law.]
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Distribution System and all other interconnection utility services.
14. Workforce Development or Supplier Diversity Reporting (if applicable).
15. Any other documentation reasonably requested by Buyer.

## EXHIBIT F-1

### FORM OF AVERAGE EXPECTED ENERGY REPORT

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT F-2

### FORM OF AVAILABLE CAPACITY FORECAST

Available Capacity, MWh Per Hour – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.9, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)] - (E + F)$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market (as such term is defined in the CAISO Tariff) hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes as reasonably determined by Buyer; [REDACTED]

D = the Renewable Rate for the Contract Year which ends each Performance Measurement Period, in \$/MWh

E = The amount of GEP Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is (C - D)

**“Adjusted Energy Production”** shall mean the sum of the following: Delivered Energy + Deemed Delivered Energy + Lost Output.

No payment shall be due if the calculation of (a) (A - B), (b) (C - D), or (c) [(A - B) \* (C - D)] - (E + F), yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, *provided*, the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

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“**Replacement Energy**” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period or, with Buyer’s prior written consent, in the following calendar year.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes for the previous Contract Year. Seller shall provide Replacement Product for the same Performance Measurement Period or, with Buyer’s prior written consent, in the following calendar year.



## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [**LICENSED PROFESSIONAL ENGINEER**] (“**Engineer**”) to San Diego Community Power Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [**DATE**] (“**Agreement**”) by and between [**SELLER**] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [**DATE**], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Distribution System in accordance with the Interconnection Agreement.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with this Agreement and/or the CAISO.
5. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
6. Authorization to parallel the Facility was obtained from the Distribution Provider on \_\_\_\_ [**DATE**] \_\_\_\_.
7. The Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation \_\_\_\_ [**DATE**] \_\_\_\_.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_ [**DATE**] \_\_\_\_.
9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time Markets in respect of the Facility.
10. Seller has segregated and separately metered Station Use to the extent required in accordance with the retail service provider’s tariff, and any such meter(s) have the same or greater level of accuracy as is required under the retail service provider’s tariff.

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EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] ("**Engineer**") to San Diego Community Power Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*DATE*] ("**Agreement**") by and between [*SELLER*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The performance test for the Facility demonstrated peak electrical output of \_\_\_ kW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**");

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[*LICENSED PROFESSIONAL ENGINEER*]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J**  
**RESERVED**

## EXHIBIT K

### FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiry Date:

Beneficiary:

San Diego Community Power Authority  
PO Box 12716  
San Diego, CA 92112

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of San Diego Community Power, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall renew annually until terminated in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own

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immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

This Letter of Credit may only be terminated upon one hundred twenty (120) days' prior written notice from Issuer to Beneficiary by registered mail or overnight courier service that Issuer elects not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: San Diego Community Power, Chief Financial Officer, PO Box 12716, San Diego, CA 92112. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of San Diego Community Power, a California joint powers authority, PO Box 12716, San Diego, CA 92112, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of \_\_\_\_\_ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of San Diego Community Power and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to San Diego Community Power by wire transfer in immediately available funds to the following account:

[Specify account information]

San Diego Community Power

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_

**EXHIBIT L**  
**FACILITY OPERATIONS DATA**

<b>Data Point</b>
Unit Gross kW
Unit Net kW
High Sustainable Limits
ADS 5 Minute Dispatch Operating Targets Setpoint
Aggregate Gross MW
Interconnection Point/Delivery Point MW
Meteorological Data <sup>2</sup>
Heartbeat
Frequency

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<sup>2</sup> Meteorological Data includes irradiance, back panel temperature, wind speed, wind direction, and temperature and such other data as mutually agreed to by the Parties.



**EXHIBIT M**  
**RESERVED**

# EXHIBIT N

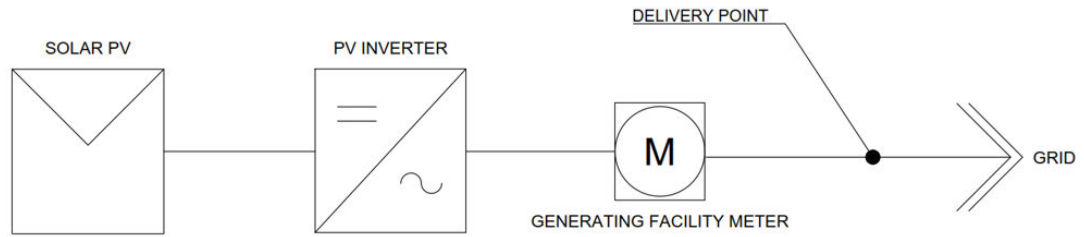
## NOTICES

<b>LUMINIA CA DEVCO 4, LLC</b> ("Seller")	<b>SAN DIEGO COMMUNITY POWER</b> ("Buyer")
<b>All Notices:</b> 4445 Eastgate Mall, Suite 200 San Diego, CA 92121 Attn: Alan Whiting, CFO  Phone: (858) 866-8777 Email: info@luiminia.io	<b>All Notices:</b> PO Box 12716 San Diego, CA 92112 Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org
<b>Reference Numbers:</b> [REDACTED] [REDACTED]	<b>Reference Numbers:</b> Duns: 11-754-8142 Federal Tax ID Number: 85-0824464
<b>Invoices:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Invoices:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
<b>Scheduling:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Scheduling:</b> Tenaska Power Services Co. Attn: Kara Whillock Phone: (972) 333-6122 Email: kwhillock@tnsk.com Day Ahead: (817) 303-1115 Real Time: (817) 303-1852 Facsimile: (817) 303-1104
<b>Confirmations:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Confirmations:</b> Attn: SDCP Settlements Phone: (619) 880-6545 Email: settlements@sdcommunitypower.org
<b>Payments:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Payments:</b> Attn: Michael Maher Phone: (415) 526-3020 Email: mmaher@maher CPA.com
<b>Wire Transfer:</b> [REDACTED] [REDACTED] [REDACTED]	<b>Wire Transfer:</b> [REDACTED] [REDACTED] [REDACTED]

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<b>LUMINIA CA DEVCO 4, LLC</b> ("Seller")	<b>SAN DIEGO COMMUNITY POWER</b> ("Buyer")
<b>With additional Notices of an Event of Default to:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>With additional Notices of an Event of Default to:</b> Attn: Veera Tyagi, General Counsel PO Box 12716 San Diego, CA 92112 Email: <a href="mailto:vtyagi@sdcommunitypower.org">vtyagi@sdcommunitypower.org</a>
<b>Emergency Contact:</b> Attn: Alan Whiting, CFO Phone: (858) 866-8777 Email: info@luiminia.io	<b>Emergency Contact:</b> Attn: Byron Vosburg, Director of Power Services Phone: (619) 880-6545 Email: bvosburg@sdcommunitypower.org

**EXHIBIT O**  
**METERING DIAGRAM**



## **EXHIBIT P**

### **WORKFORCE DEVELOPMENT**

#### **Sample Supplier Diversity Survey**

Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "Not Applicable" or "Decline to State."

Pursuant to Proposition 209, SDCP does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact your participation in any future SDCP solicitation selection process. Responses are collected for informational and reporting purposes only pursuant to Senate Bill (SB) 255.

\*Required

1. Business Name\*

2. Email Address\*

3. Where is your business located/headquartered?

4. Is your business certified under General Order 156 (GO 156)? GO 156 is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database at [www.thesupplierclearinghouse.com](http://www.thesupplierclearinghouse.com).

Yes

No

Qualified as a WMDVLGBTBE but not GO 156 certified

5. If you answered "yes" to Question 4, when does your certification expire?

6. If you answered "yes" or "qualified, but not certified" to Question 4, in which categories are you certified or qualified? Please choose all that apply.

Minority Owned

Women Owned

LGBT Owned

Disabled Veteran Owned

Small Business Enterprise, as defined by 8(d) of the Small Business Act

7. If your business is a minority-owned business enterprise, what GO156 certification or

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qualification does your business fall under?

Black American

Hispanic American

Asian Pacific American

Native American

8. Please list the Standardized Industrial Code (SIC) of the products and services your business offers. Search for your SIC in the “Commodity Codes” search bar, here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

9. If certified under GO 156, please list your annual business revenue as reported to the CPUC Supplier Clearinghouse. You may check your CPUC Supplier Clearinghouse status here: <https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>.

10. If your business is qualified, but not GO 156 certified, please identify the reasons for not completing the certification process?

11. If your business has used GO 156 certified subcontractors for your SDCP contract, please include a list of your subcontractor business names, if the subcontract is for products or services, and the anticipated subcontract amount. Example: Electrical Design Technology, Inc.; products (batteries); \$100,000.

12. If applicable, please describe any hiring policies your business has for using small, local, and/or economically disadvantaged subcontractors or for using subcontractors that qualify for the GO 156 Supplier Clearinghouse.

13. Does your business have a history of using apprenticeship programs, local hires, union labor, or multi-trade project labor agreements? Local hires can be defined as labor-sourced from within SDCP’s service area.

Yes, apprenticeship programs in this recent contract with SDCP

Yes, local labor in this recent contract with SDCP

Yes, union labor in this recent contract with SDCP

Yes, multi-trade PLA in this recent contract with SDCP

Yes, apprenticeship programs but not in this contract with SDCP

Yes, history of local hire but not in this contract with SDCP

Yes, history of union labor but not in this contract with SDCP

Yes, history of multi-trade PLA but not in this contract with SDCP

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Uses California-based labor, but not local to SDCP's service areas

None of the above

Not applicable

14. Are you a small business? Please refer to the Small Business Association' Size Standards tool for more information: <https://www.sba.gov/sizestandards>.

Yes

No

15. If you answered "yes" to question 14, please describe your history with labor agreements, union labor, multi-trade labor, apprenticeship labor, or how many local workers/businesses you employ for your contract with SDCP.

16. Is there any additional feedback that you would like to provide to SDCP at this time?

17. Does the bidder have formal initiatives to promote diversity, equity, and inclusion among its workforce?

18. If the answer to question 17 is "Yes," please explain and provide supporting documentation.

19. Has the bidder adopted formal Environmental, Social, and Governance (ESG) goals?

20. If the answer to question 19 is "Yes", please explain and provide supporting documentation.

**EXHIBIT Q**  
**FORM OF LIMITED ASSIGNMENT AGREEMENT**  
**LIMITED ASSIGNMENT AGREEMENT**

This Limited Assignment Agreement (this “**Agreement**”) is entered into as of [\_\_\_\_] (the “**Assignment Agreement Effective Date**”) by and among [PPA SELLER], a [\_\_\_\_] limited liability company (“**PPA Seller**”), San Diego Community Power, a California joint powers authority (“**PPA Buyer**”), and [\_\_\_\_], a Delaware corporation (“**Financing Entity**”).

**RECITALS**

WHEREAS, PPA Buyer and PPA Seller are parties to that certain PPA identified on Appendix 1 hereto;

WHEREAS, in connection with a prepaid electricity transaction between California Community Choice Financing Authority (“**Issuer**”) and Energy Prepay IV, LLC (“**Prepay LLC**”), and with effect from and including the Assignment Period Start Date (as defined below), PPA Buyer wishes to transfer by limited assignment to Limited Assignee, and Limited Assignee wishes to accept the transfer by limited assignment of, the Assigned Rights and Obligations (as defined below) for the duration of the Assignment Period (as defined below);

WHEREAS, pursuant to this Agreement, during the Assignment Period, Limited Assignee will receive the Assigned Product and Limited Assignee will deliver such Assigned Product to Prepay LLC, which will redeliver such Assigned Product to Issuer for ultimate redelivery to PPA Buyer; and

WHEREAS, pursuant to this Agreement, during the Assignment Period, Limited Assignee will assume responsibility for the Delivered Product Payment Obligation.

THEREFORE, in consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Limited Assignee (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

**AGREEMENT**

**1. Definitions.**

Unless the context otherwise specifies or requires, or defined below, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. The following terms, when used in this Agreement and identified by the capitalization of the first letter thereof, have the



respective meanings set forth below, unless the context otherwise requires:

**“Agreement”** has the meaning specified in the first paragraph above.

**“Assigned Product”** means (i) [PV Energy] and (ii) [Green Attributes (PCC1)], as each is defined in the PPA.

**“Assigned Rights and Obligations”** means (i) the rights of PPA Buyer under the PPA to receive the Assigned Product in each Month during the Assignment Period, as such rights may be limited or further described in the “Further Information” section on Appendix 1, and (ii) the Delivered Product Payment Obligation, which right and obligation are transferred and conveyed to Limited Assignee hereunder, but which shall not relieve PPA Buyer of its obligations under the PPA in any respects.

**“Assignment Early Termination Date”** has the meaning specified in Section 5(b).

**“Assignment Period”** has the meaning specified in Section 5(a).

**“Assignment Period End Date”** means 11:59:59 p.m. pacific prevailing time on [\_\_\_\_\_].

**“Assignment Period Start Date”** means [\_\_\_\_\_].

**“Claims”** means all claims or actions, threatened or filed, and the resulting losses, damages, expenses, attorneys’ fees, experts’ fees, and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, in each case arising under, in respect of or related in any way to the PPA or any transaction thereunder, except for the Delivered Product Payment Obligation.

**“Custodian”** means U.S. Bank Trust Company, National Association.

**“Delivered Product Payment Obligation”** has the meaning specified in Section 3(a).

**“Issuer”** means California Community Choice Financing Authority, a joint powers authority and a public entity of the State of California established pursuant to the provisions of the Joint Exercise of Powers Act (Article 1, Chapter 5, Division 7, Title 1, Section 6500 et seq. of the California Government Code, as amended).

**“Limited Assignee”** has the meaning specified in the first paragraph of this Agreement.

**“Month”** means a calendar month.

**“Monthly Gross Amount”** has the meaning specified in Section 3(c).

**“PPA Buyer”** has the meaning specified in the first paragraph of this Agreement.

**“PPA Seller”** has the meaning specified in the first paragraph of this Agreement.

**“Prepaid Agreement”** means that certain Prepaid Energy Sales Agreement dated as of November 5, 2024 by and between Prepay LLC and Issuer as amended from time to time.

“**Prepay LLC**” has the meaning specified in the first paragraph of this Agreement.

“**Prepay Power Supply Contract**” means that certain Power Supply Contract dated November 5, 2024 by and between PPA Buyer and Issuer as amended from time to time.

“**Receivables**” has the meaning given to such term in Section 3(f).

“**Retained Rights and Obligations**” has the meaning specified in Section 3.

## **2. Transfer and Undertakings.**

(a) PPA Buyer hereby assigns, transfers and conveys to Limited Assignee all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the Assigned Product during the Assignment Period. In connection with this assignment, PPA Buyer hereby delegates to Limited Assignee the Assigned Rights and Obligations during the Assignment Period.

(b) PPA Seller hereby consents and agrees to PPA Buyer’s assignment, transfer and conveyance of all right, title and interest in and to the Assigned Product and, subject to Section 3, the delegation of the Assigned Rights and Obligations to Limited Assignee and the exercise and performance by Limited Assignee of the Assigned Rights and Obligations during the Assignment Period.

(c) Limited Assignee hereby accepts such assignment, transfer and conveyance of PPA Buyer’s right, title and interest in and to the Assigned Products during the Assignment Period, and PPA Buyer’s delegation of the Assigned Rights and Obligations during the Assignment Period and agrees to perform any such Assigned Rights and Obligations due from it during the Assignment Period to the extent expressly set forth in this Agreement.

## **3. Limited Assignment.**

The Parties acknowledge and agree that (i) the Assigned Rights and Obligations include only a portion of PPA Buyer’s rights and obligations under the PPA, and that all rights and obligations (including without limitation obligations with respect to payment for any Product not included in the Assigned Product and any other amounts owed under the PPA) arising under the PPA that are not expressly included in the Assigned Rights and Obligations shall be “**Retained Rights and Obligations**” that are retained solely by PPA Buyer, and (ii) the Retained Rights and Obligations include all rights and obligations of PPA Buyer arising during the Assignment Period except the rights and obligations expressly included in the Assigned Rights and Obligations. In this regard:

(a) **Limited to Delivered Product Payment Obligation.** Limited Assignee’s sole payment obligation hereunder will be to pay the Floating Price Payments into the Custodial Account as such terms are defined in and described on Appendix 1 (the “**Delivered Product Payment Obligation**”). Limited Assignee and PPA Buyer each agree to instruct the Custodian in accordance with Section 3(c) hereof to pay PPA Seller for the Assigned Product delivered during each Month of the Assignment Period on each applicable payment date under Section [ ] of the PPA. PPA Buyer shall remain responsible for any payment obligations under the PPA during the Assignment Period, including in the event that either (i) Limited Assignee does not make the payments into the Custodial Account as described above or (ii) the Custodian does not make the payments to the PPA Seller from the Custodial Account as described above.

(b) **Retained Rights and Obligations.** Any Claims (other than the Delivered Product Payment Obligation or a failure to perform the same) arising or existing in connection with or related to the PPA, whether related to performance by PPA Seller, PPA Buyer or Limited Assignee, and whether arising before, during or after the Assignment Period, in each case excluding the Delivered Product Payment Obligation, will be included in the Retained Rights and Obligations, and any such Claims will be resolved exclusively between PPA Seller and PPA Buyer in accordance with the PPA.

(c) **Invoicing.** During the Assignment Period, PPA Seller shall continue to provide PPA Buyer a monthly invoice of amounts owing under the PPA, which invoice shall show the total amount due to PPA Seller under the PPA for such Month (the “**Monthly Gross Amount**”). Promptly following PPA Buyer’s receipt of each monthly invoice from PPA Seller during the Assignment Period and, in any event, no later than seven (7) days thereafter, PPA Buyer shall deliver (i) a copy of such monthly invoice and the related supporting data to Limited Assignee and (ii) a statement to each of Limited Assignee and the Custodian indicating (A) the Monthly Gross Amount; (B) the Delivered Product Payment Obligation; and (C) the “Retained Payment Obligation”, which shall be an amount equal to the Monthly Gross Amount minus the Delivered Product Payment Obligation. PPA Buyer and Limited Assignee covenant and agree to instruct the Custodian to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA, *provided*, that the liability of Limited Assignee hereunder to PPA Seller is limited as described on Appendix 1. PPA Buyer and Limited Assignee may agree in a separate writing as to the allocation of the Monthly Gross Amount between PPA Buyer and Limited Assignee of amounts paid by the Custodian to PPA Seller hereunder. At all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA. For the avoidance of doubt, the Parties acknowledge and agree that any invoice adjustments or reconciliations occurring after the initial settlement of amounts due under a monthly invoice shall be resolved exclusively between PPA Seller and PPA Buyer pursuant to the terms of the PPA.

(d) **Scheduling.** All scheduling of Energy associated with the Assigned Product and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that during the Assignment Period (i) title to Assigned Product will pass to Limited Assignee upon delivery by PPA Seller at the Delivery Point in accordance with the PPA; (ii) immediately thereafter, title to such Assigned Product will pass to Prepay LLC, Issuer and then to PPA Buyer upon delivery by Limited Assignee at the same point where title is passed to Limited Assignee pursuant to clause (i) above; (iii) PPA Buyer will be deemed to be acting as Limited Assignee’s agent with regard to scheduling Assigned Product; and (iv) PPA Buyer will provide copies to Limited Assignee of (A) any notice of a Force Majeure Event delivered under the PPA, (B) any notice of a default or of a breach or other event that, if not cured within an applicable grace period, could result in an Event of Default, (C) annual forecasts and monthly forecasts with respect to the Assigned Product delivered by PPA Seller under [Section \_\_] of the PPA, (D) invoices delivered by PPA Seller under [Section \_\_ of the PPA] (with a copy to the Custodian if and to the extent retained by PPA Buyer and Limited Assignee), and (E) any other information reasonably requested by Limited Assignee relating to Assigned Product.

(e) **Amendments.** PPA Buyer will provide written notice (including copies thereof) of any amendment, waiver, supplement, modification, or other changes to the PPA to relating to the Assigned Rights and Obligations, and the Parties hereby acknowledge and agree that an

amendment, waiver, supplement, modification or other change will not have any effect on Limited Assignee's rights or obligations under this Agreement unless and until Limited Assignee receives written notice thereof. No amendment, modification, or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile or electronic transmission) and executed by each of the Parties.

(f) **Setoff of Receivables.** Pursuant to the Prepaid Agreement, Prepay LLC has agreed to purchase the rights to payment of the net amounts owed by PPA Buyer under the Prepay Power Supply Contract ("**Receivables**") in the case of non-payment by PPA Buyer. To the extent any such Receivables relate to Assigned Product purchased by Limited Assignee pursuant to the Assigned Rights and Obligations, Prepay LLC may sell such Receivables to Limited Assignee and, provided that Limited Assignee has notified PPA Seller in writing (with a copy to PPA Buyer) (a "**Receivables Setoff Notice**") that the amount of any such Receivables is true and accurate, Limited Assignee may transfer such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) to PPA Seller and apply the face amount of such Receivables (excluding any penalties, late payment fees, late payment interest or other fees, costs or interest included in such Receivables) as a reduction to any Delivered Product Payment Obligations; provided, however, that (1) at no time shall PPA Seller be required to pay Limited Assignee for any amounts by which such Receivables exceed any Delivered Product Payment Obligations, and (2) at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice. The amount of any Receivables set forth in a Receivables Setoff Notice shall be final and binding unless PPA Buyer shall have provided PPA Seller and Limited Assignee a written notice within two (2) Business Days of its receipt of a Receivables Setoff Notice containing conclusive evidence that such amount is incorrect and asserting what PPA Buyer has determined is the correct amount of Receivables. If any dispute arises therefrom, Limited Assignee shall still be entitled to set-off the amount of Receivables set forth in its Receivables Setoff Notice as provided above, and any such dispute as to the correct amount of Receivables shall be settled exclusively between PPA Buyer and PPA Seller with no liability to Limited Assignee, provided that at all times, PPA Buyer remains liable to PPA Seller for all amounts due and owing under the PPA including the Monthly Gross Amount under each invoice.

#### **4. Forward Contract.**

The Parties acknowledge and agree that this Agreement is intended to constitute a "forward contract" and that the Parties is intended to constitute "forward contract merchants" within the meaning of the United States Bankruptcy Code.

#### **5. Assignment Period; Assignment Early Termination.**

(a) **Assignment Period.** The "**Assignment Period**" shall begin on the Assignment Period Start Date and extend until the Assignment Period End Date; provided that in no event shall the Assignment Period extend past an Assignment Early Termination Date; and further provided that the Assignment Period will automatically terminate upon the expiration or early termination of either the Delivery Term or the PPA.

(b) **Early Termination.** An "**Assignment Early Termination Date**" will occur under the following circumstances and as of the dates specified below:

i. delivery of a written notice of termination by either Limited Assignee or PPA Buyer to each of the other Parties hereto;

ii. delivery of a written notice of termination by PPA Seller to each of Limited Assignee and PPA Buyer following Limited Assignee's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for five (5) Business Days following receipt by Limited Assignee of written notice thereof;

iii. delivery of a written notice by PPA Seller if any of the events described in [Section 1.1, definition of "Bankrupt" of the PPA], occurs with respect to Limited Assignee; or

iv. delivery of a written notice by Limited Assignee if any of the events described in [Section 1.1, definition of "Bankrupt" of the PPA], occurs with respect to PPA Seller.

(c) **Reversion of Assigned Rights and Obligations.** The Assignment Period will end at the end of the last delivery hour on the date specified in any termination notice provided pursuant to Section 5(b). The Parties acknowledge and agree that upon the occurrence of an Assignment Early Termination Date, early termination pursuant to Sections 5(d) and at the expiration of the Assignment Period the Assigned Rights and Obligations will revert from Limited Assignee to PPA Buyer. Any Assigned Rights and Obligations that would become due for payment or performance on or after such Assignment Early Termination Date or early termination pursuant to Section 5(d) shall immediately and automatically revert from Limited Assignee to PPA Buyer, provided that (i) Limited Assignee shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Limited Assignee prior to the Assignment Early Termination Date or prior to the expiration of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the occurrence of the Assignment Early Termination Date or the expiration of the Assignment Period.

(d) **Early Termination for PPA Termination.** The Assignment Period will automatically terminate upon the expiration or early termination of the PPA.

## **6. Representations and Warranties.**

(a) **Copy of PPA.** As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to Limited Assignee that a true, complete, and correct copy of the PPA as of such date is attached hereto as Appendix 3.

(b) **No Default.** As of the Assignment Agreement Effective Date, each of PPA Seller and PPA Buyer represents and warrants to Limited Assignee that no event or circumstance exists (or would exist with the passage of time or the giving of notice) that, to its knowledge, would give either of them the right to terminate the PPA or suspend performance thereunder.

(c) **Other.** Each of PPA Buyer and PPA Seller represents and warrants to each other and to Limited Assignee that:

i. It has made no prior transfer (whether by way of security or otherwise) of any interest in the Assigned Rights and Obligations; and

ii. To its knowledge, all obligations of PPA Buyer and PPA Seller under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

(d) **Representations.** Each Party represents to each of the other Parties as of the Assignment Agreement Effective Date:

i. **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing.

ii. **Powers.** It has the power to execute, this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance.

iii. **No Violation or Conflict.** Such execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the incurrence by such Party of its obligations under this Agreement, will not result in any violation of, or conflict with: (i) any term of any material contract or agreement applicable to it; (ii) any of its charter, bylaws, or other constitutional documents; (iii) any determination or award of any arbitrator applicable to it; or (iv) any license, permit, franchise, judgment, writ, injunction or regulation, decree, order, charter, law, ordinance, rule or regulation of any Government Agency presently in effect, applicable to it or any of its assets or properties or to any obligations incurred by it or by which it or any of its assets or properties or obligations are bound or affected, and shall not cause a breach of, or default under, any such term or result in the creation of any lien upon any of its properties or assets.

iv. **Consents.** All consents, approvals, orders or authorizations of, registrations, declarations, filings or giving of notice to, obtaining of any licenses or permits from, or taking of any other action with respect to, any Person or Government Agency that are required to have been obtained by such Party with respect to this Agreement and the transactions contemplated hereby, including the due authorization of such Party and its governing body and any approval or consent of any security holder of such Party or any holder (or any trustee for any holder) of any indebtedness or other obligation of such Party, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

v. **Obligations Binding.** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles

of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

vi. **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other Parties as investment advice or as a recommendation to enter into this Agreement; it being understood that information and explanations related to the terms and conditions of this Agreement shall not be considered investment advice or a recommendation to enter into this Agreement. It is entering into this Agreement as a bona-fide, arm's-length transaction involving the mutual exchange of consideration and, once executed by all Parties, considers this Agreement a legally enforceable contract. No communication (written or oral) received from any of the other Parties shall be deemed to be an assurance or guarantee as to the expected results of this Agreement.

vii. **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of this Agreement. It is also capable of assuming, and assumes, the risks of this Agreement.

viii. **Status of Parties.** None of the other Parties is acting as a fiduciary for or an adviser to it in respect of this Agreement.

## **7. Miscellaneous.**

Article [ ] (Confidential Information), [ ] (No Consequential Damages), [ ] (Amendments), [ ] (No Agency, Partnership, Joint Venture or Lease), Sections [ ] (Severability), [ ] (Electronic Delivery), [ ] (Counterparts), Section [ ] (Binding Effect) and [ ] (Forward Contract) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

## **8. Costs and Expenses.**

The Parties shall each pay their own costs and expenses (including legal fees) incurred in connection with this Agreement and as a result of the negotiation, preparation, and execution of this Agreement.

## **9. Notices.**

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be delivered in accordance with [Section ] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify Limited Assignee of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to Limited Assignee shall be provided to the address set forth in Appendix 2. Each Party may update its address from time to time by notice to the other Parties.

## **10. Governing Law; Dispute Resolution.**

(a) Governing Law. This Agreement and the rights and duties of the Parties under this Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; *provided*, however, that the authority of PPA Buyer to enter into and perform its obligations under this agreement shall be determined in accordance with the laws of the state of California.

(b) Arbitration. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope of this Agreement to arbitrate, shall be determined by final, non-appealable binding arbitration in San Francisco, California before three (3) arbitrators. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures. Within fifteen (15) days after the commencement of arbitration, each of Limited Assignee and PPA Buyer shall select one person to act as arbitrator, and the two so-selected arbitrators shall select a third arbitrator (the “chairperson”) within thirty (30) days of the commencement of the arbitration. If either Limited Assignee or PPA Buyer is unable or fails to select one person to act as arbitrator, such arbitrator shall be appointed by JAMS. If the Limited Assignee and PPA Buyer-selected arbitrators are unable or fail to agree upon a chairperson, the chairperson shall be appointed by JAMS. The chairperson shall be a person who has experience in renewable energy-related transactions, and none of the arbitrators shall have been previously employed by any Party or have any direct pecuniary interest in any Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by all of the Parties. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including any hearing(s), except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The responsibility for compensation and expenses of the three arbitrators and all other expenses charged by JAMS shall be equally split in one-third (1/3) shares by each of Limited Assignee, PPA Buyer, and PPA Seller. In any arbitration arising out of or related to this Agreement, the arbitrators shall award to the prevailing Party or Parties, if any, the costs and attorney's fees reasonably incurred in seeking to enforce the application of this Section 10(b) and by the prevailing party in connection with the arbitration. Notwithstanding the foregoing provisions of this Section 10(b), any costs incurred by a Party in seeking judicial enforcement of any written decision of the arbitrators shall be chargeable to and borne exclusively by the Party against whom such court order is obtained. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

(c) Judicial Reference. Without limiting the provisions in Section 10(b), if Section 10(b) is deemed ineffective or unenforceable in any respect, any dispute between the Parties arising out of or in connection with this Agreement or its performance, breach, or termination (including the existence, validity and interpretation of this Agreement and the applicability of any statute of



limitation period) (each, a “**Dispute**”) shall be resolved by a reference proceeding in California in accordance with the provisions of Sections 638 et seq. of the California Code of Civil Procedure (“**CCP**”), or their successor sections (a “**Reference Proceeding**”), which shall constitute the exclusive remedy for the resolution of any Dispute. As a condition precedent to initiating a Reference Proceeding with respect to any Dispute, the Parties shall comply with the provisions of Section 10(c)(i).

i. Notice of Dispute. Prior to initiating the Reference Proceeding, a Party (the “**Disputing Party**”) shall provide the other Parties (the “**Responding Parties**”) with a written notice of each issue in dispute, a proposed means for resolving each such issue, and support for such position (the “**Notice of Dispute**”). Within 10 days after receiving the Notice of Dispute, the Responding Parties shall provide the Disputing Party with a written Notice of each additional issue (if any) with respect to the dispute raised by the Notice of Dispute, a proposed means for resolving every issue in dispute, and support for such position (the “**Dispute Response**”). Thereafter, the Parties shall meet to discuss the matter and attempt in good faith to reach a negotiated resolution of the dispute. If the Parties do not resolve the dispute by unanimous agreement within fifteen (15) days after receipt of the Dispute Response, (the “**Negotiation Period**”), then any Party may provide to the other Parties written notice of intent for judicial reference (the “**Impasse Notice**”) in accordance with the further provisions of this Section 10(c).

ii. Applicability; Selection of Referees. Within 10 days of the delivery of an Impasse Notice, each of Limited Assignee and PPA Buyer shall nominate one (1) referee. The two (2) referees (the “**Party-Appointed Referees**”) shall appoint a third referee (the “**Third Referee**”, together with the Party-Appointed Referees, the “**Referees**”). The Party-Appointed Referees shall be competent and experienced in matters involving the electric energy business in the United States, with at least ten (10) years of electric energy industry experience as a practicing attorney. The Third Referee shall be an active or retired California state or federal judge. Each of the Party-Appointed Referees and the Third Referee shall be impartial and independent of each of the Parties and of the other referees and not employed by any of the Parties in any prior matter.

iii. Inability to Agree upon Third Referee. If the Party-Appointed Referees are unable to agree on the Third Referee within 45 days from delivery of the Impasse Notice, then the Third Referee shall be appointed pursuant to CCP Section 640(b) in an action filed in the Superior Court of California, County of San Francisco (the “**Court**”), and with due regard given to the selection criteria above. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. Pursuant to CCP Section 170.6, each of PPA Buyer and Limited Assignee shall have one (1) peremptory challenge to the referee selected by the Court.

iv. Discovery; Proceedings.

(A) The Parties agree that time is of the essence in conducting the Reference Proceeding. Accordingly, the Referees shall be requested, subject to change in the time periods specified herein for good cause shown, to (i) set the matter for a status and trial-setting conference within 20 days after the date of selection of the Third Referee, (ii) if practicable, try all issues of law or fact within

180 days after the date of the conference, and (iii) report a statement of decision within 20 days after the matter has been submitted for decision.

(B) Discovery and other pre-hearing procedures shall be conducted as agreed to by the Parties, or if they cannot agree, as determined by the Third Referee after discussion with the Parties regarding the need for discovery and other pre-hearing procedures.

(C) Except as expressly set forth herein, the Third Referee shall determine the manner in which the Reference Proceeding is conducted, including the time and place of hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the Reference Proceeding. The Reference Proceeding, including the trial, shall be conducted at a neutral location selected by the Parties, or if not agreed by the Parties, by the Third Referee, in San Francisco, California.

(D) All proceedings and hearings conducted before the Referees, except for trial, shall be conducted without a court reporter, except that when any Party so requests, a court reporter will be used at any hearing conducted before the Referees, and the Referees will be provided a courtesy copy of the transcript. The Party making such a request shall have the obligation to arrange for and pay the court reporter.

v. Decision. The Referees shall render a written statement of decision setting forth findings of fact and conclusions of law. The Referees shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The decision shall be entered as a judgment in the court in accordance with the provisions of CCP Sections 644 and 645. The decision shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Parties intend this general reference agreement to be specifically enforceable in accordance with the CCP.

vi. Expenses. Each of Limited Assignee, PPA Seller and PPA Buyer shall bear the compensation and expenses of its respective own counsel, witnesses, consultants and employees. The responsibility for compensation and expenses of the Referees and all other expenses of judicial reference shall be equally split in one-third (1/3) shares by each of Limited Assignee, PPA Buyer, and PPA Seller

**10. U.S. Resolution Stay Protocol.** The Parties hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol (“**ISDA U.S. Stay Protocol**”), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, Limited Assignee shall be deemed to be a Regulated Entity, and PPA Buyer and PPA Seller each shall be deemed to be an Adhering Party. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.



IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Assignment Agreement Effective Date.

[PPA SELLER]

By: \_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

SAN DIEGO COMMUNITY POWER

By: \_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

[FINANCING ENTITY].

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix 1

### Assigned Rights and Obligations

**PPA:** Renewable Power Purchase Agreement dated as of [\_\_\_\_], by and between PPA Buyer and PPA Seller, as may be amended from time to time.

**Delivery Point:** [\_\_\_\_]

**Further Information:** PPA Seller shall transfer or, to the extent applicable, continue to transfer, to PPA Buyer the WREGIS Certificates associated with all [Renewable Energy Credits] corresponding to all [PV Energy] under the PPA pursuant to [Section \_\_\_\_ of the PPA], provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both Limited Assignee and PPA Buyer upon fifteen (15) Business Days' notice, which change shall be effective as of the first day of the next calendar month after such notice period has expired, unless otherwise agreed. All Assigned Product delivered by PPA Seller to Limited Assignee shall be a sale made at wholesale, with Limited Assignee reselling all such Assigned Product. Terms with initial capitalization used in this paragraph but not otherwise defined in this Agreement have the meaning set forth in the PPA.

**Limitation of Limited Assignee Liability.** Limited Assignee has separately agreed with the PPA Buyer and the Custodian (pursuant to the Custodial Agreement dated November 20, 2024, among PPA Buyer, Limited Assignee and the Custodian (the “**Custody Agreement**”)) to pay into the custodial account specified in the Custody Agreement (the “**Custodial Account**”) for Assigned Product delivered in each Month of the Assignment Period at the “Day-Ahead Average Price” as defined below (“**Floating Price Payments**”). Limited Assignee agrees for the benefit of the PPA Seller to pay the Floating Price Payments into the Custodial Account, and Limited Assignee's payment obligations under this Agreement are limited to making such payments into the Custodial Account, for application as provided in the Custody Agreement. PPA Buyer and PPA Seller each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by Limited Assignee shall not entitle (i) PPA Seller for payments in excess of the [Contract Price] for Assigned Product delivered hereunder or (ii) PPA Buyer to pay less than the [Contract Price] for Assigned Product delivered hereunder. PPA Buyer and Limited Assignee each acknowledge and agree that the making of Floating Price Payments into the Custodial Account by Limited Assignee shall not entitle (i) Limited Assignee to any payments from PPA Seller or (ii) affect the Custodian's obligation to pay the Monthly Gross Amount to PPA Seller on or before the applicable payment date in the PPA. At all times the PPA Buyer shall remain obligated for the payment of all amounts owing under the terms of the PPA including the Monthly Gross Amount under each invoice.

“Day-Ahead Average Price” means (x) the sum of the Day-Ahead Market Prices for each Pricing Interval in a Month divided by (y) the number of Pricing Intervals in such Month. As used in this definition, “Pricing Interval” means the unit of time for which [ ] establishes a separate price. As used in this definition “Day-Ahead Market Price” means the Day Ahead Market or Locational Marginal Price for [ ] for each applicable hour as published by [ ], or as such price may be corrected or revised from time to time by [ ] in accordance with its rules. For the avoidance of doubt, the Day-Ahead Average Price can be a negative number.

## **Appendix 2**

### **FINANCING ENTITY Notice Information**

**[To be completed before signing.]**



**Appendix 3**  
**Copy of PPA**  
**[To be attached.]**

Signature Page to Limited Assignment Agreement





**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 15**

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**TO:** Board of Directors

**FROM:** Eric W. Washington, Chief Financial Officer/Treasurer

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Approve a Contract with Maher Accountancy for General Accounting Professional Services in an Up-to-Amount, Not-to-Exceed \$1,185,000 from February 1, 2025, Through January 31, 2028, and for Two Optional One-Year Extensions for a Total Up-to-Amount, Not-to-Exceed \$2,069,700, and Authorize the Chief Executive Officer to Execute the Contract

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Approve a Contract with Maher Accountancy for General Accounting Professional Services in an Up-to-Amount Not-to-Exceed \$1,185,000 from February 1, 2025, through January 31, 2028, and for Two Optional One-Year Extensions for a total up-to-amount, not-to-exceed \$2,069,700, and Authorize the Chief Executive Officer to Execute the Contract.

**BACKGROUND:**

On June 25, 2020, the San Diego Community Power (Community Power) Board of Directors (Board) received an update from staff on a request for proposals and other solicitations stating that an accounting firm with Community Choice Aggregation (CCA) experience, Maher Accountancy (Consultant), would be retained and would start work for Community Power on August 1, 2020.

Subsequently, on August 1, 2020, the professional services agreement (Agreement) between Community Power and the Consultant was executed for a term of August 1, 2020, to July 31, 2021, with a not-to-exceed amount of \$112,500. Later, on May 27, 2021, the Board approved the first amendment to the Agreement to establish the not-to-exceed amount of \$241,000 for the period covering May 1, 2021, to June 30, 2022. Then on June 23, 2022, the Board approved the second amendment to the Agreement to establish the not-to-exceed amount of \$223,000 for the period July 1, 2022, to June 30, 2023. Subsequently, the Board approved a third amendment to the Agreement to establish the not-to-exceed amount of \$297,000 for the period July 1, 2023, to June 30, 2024. Next, on June 28, 2024, a fourth amendment was executed by the Chief Executive Officer through

the Community Power's Contract Delegation Policy to establish a not-to-exceed amount of \$87,500 from July 1, 2024, to September 30, 2024.

On October 1, 2024, Community Power entered into a new Agreement with the Consultant through section 5.b of the Community Power Procurement Policy to establish the not-to-exceed amount of \$112,000 for a term of October 1, 2024, to January 31, 2025. The new agreement was necessary to adequately finish Community Power's FY 2023-24 financial audit consistent with sections 4.6.14, 5.4, and 7.2.2 of the Community Power Joint Powers Agreement.

Finally, on November 7, 2024, Community Power issued a request for proposals (RFP) for general accounting professional services to solicit additional proposals. The deadline to submit proposals was December 12, 2024, and Community Power received four proposals. Evaluation of the proposals occurred between December 18, 2024, and December 20, 2024, with scoring based primarily on general qualifications, demonstration of past success, proposed approach, and commercial pricing terms.

Following the reviews of the proposals, Maher Accountancy was identified as the proposer able to bring the greatest value to Community Power and was the only proposer with direct, relevant experience. Maher Accountancy demonstrated strong expertise, capabilities, and experience to adequately meet Community Power's needs.

## **ANALYSIS AND DISCUSSION:**

Maher Accountancy is a full-service audit, accounting, tax, and business consulting firm that provides services to businesses and local governments across California. The Consultant provides full-service accounting to several other CCA clients in the state and provides ancillary services for other CCAs using software and analytical tools developed specifically for its CCA accounts.

This experience has allowed Maher Accountancy to develop a deep understanding of the unique business and industry needs facing Community Power. Maher Accountancy has a solid reputation in the CCA industry, both with the clients it serves and with the numerous consultants that assist CCAs. Since its inception, Maher Accountancy has focused on providing accounting and audit services to government entities.

The proposed not-to-exceed amount of \$1,185,000 for the period from February 1, 2025, to January 31, 2028, includes fees as follows:

### **Year 1**

- Monthly Financial Operational Assistance Fee: \$28,000
- Annual Financial Statement Audit Management Fee: \$16,000
- **Annual Anticipated Total Cost: \$352,000**

## Year 2

- Year 1 cost escalated at a 5% escalation factor
- **Annual Anticipated Total Cost: \$369,600**

## Year 3

- Year 2 cost escalated at a 5% escalation factor ( $\$369,600 \times 1.05$ )
- **Annual Anticipated Total Cost: \$388,400**

## Contingency

- **Total Contingency: \$75,000**

The proposed cost is an increase from the third amendment which included a not-to-exceed amount of \$277,000 for the period from July 1, 2023, to June 30, 2024. This increase is in alignment with the combination of cost-of-living increases resulting from inflation and an increased level of accounting services needed due to Community Power growth and development including, for example, the inclusion of accounting for the capital costs related to the \$124 million Regional Energy Network program and the inclusion of significantly more staff and professional services to accommodate agency growth.

The proposal also includes two optional one-year extensions that total \$407,300 and \$427,400 in each respective one-year extension.

## **Scope of Services (\$352,000 in year 1 – escalated by 5% escalation factor each subsequent year)**

Maher Accountancy's scope of services for the period outlines the tasks below.

- I. Monthly Financial Operational Assistance (\$28,000/month):
  - a) Maintain accounting system, accounts payable system and processes.
  - b) Maintain the general ledger with proper support and documentation, including:
    1. Posting accrued revenue, cash receipts, accounts payable, cash disbursements, payroll, accrued expenses, aggregate customer billings, etc.
    2. Prepare or maintain the following monthly analysis regarding general ledger account balances:
      - Reconciliation to statements from CCA's financial institution for cash activity and balances;
      - Reconciliation of customer data manager reports of customer activity and accounts receivable aging to general ledger;

- Computation of estimated user fees earned but not billed as of the end of the reporting period;
  - Schedule of depreciation of capital assets;
  - Aged schedule of accounts payable;
  - Schedules of details regarding all remaining balance sheet accounts.
- c) Manage accounts payable: Provides documentation of management review, proper segregation of duties, and access to source data. Ensures that required authorization is documented and that account coding is correct. Also provides for internal control to authorize the release of payment, providing an additional safeguard. Additionally, provides weekly and monthly support for ongoing payments to SD Community Power's net-energy-metering customers.
- d) Assist with compliance of fiscal provisions of non-energy vendor contracts for services. Before remitting vendor invoices for management approval, verifies that each vendor invoice is compliant with contract provisions regarding time periods, rates, and financial limits.
- e) Provide monthly year-to-date financial statements in compliance preferably with GAAP (without disclosures). The financial statements will be considered a compilation engagement in accordance with the Statements on Standards for Accounting and Review Services promulgated by the AICPA.
- f) Provide monthly financial statements with comparison to budget.
1. Provide timely budget amendments and insight suggestions.
- g) Filing annual information returns, such as form 1099/1096's.
- h) Prepare and file various compliance reports for state and local agencies such as user taxes, energy surcharges and state controller reports including financial transaction and government compensation in California and other states as needed.
- i) Assist in treasury function and assist staff with development of the operating budget.

## II. Financial Statement Audit Support (\$16,000/yearly audit)

- a) Draft financial statements, notes, and MD&A letter
- b) Prepare audit workpapers

- c) Coordinate with SD Community Power and the auditor.
- III. Contingency for out-of-scope items (\$75,000/initial three-year term)
- a. Grant Management Support (for additional grant programs)
    - i. Provides ongoing support in grant billing and reconciliation in compliance with grant-specific local, state and federal grant guidelines
    - ii. Assists in the preparation of SD Community Power's single audit, if necessary
    - iii. Maintains financial statements for the San Diego Regional Energy Network
    - iv. Other grant support as needed
  - b. Territory Expansion
  - c. Change in Data Manager
  - d. Non-Financial Statement Audit Assistance
  - e. Customer Software Development and Enhancements
    - i. i.e. PowerBudget development
  - f. Change in Software
    - i. Payroll Software
    - ii. Accounting Software
  - g. Significant increase or change to Customer Programs
  - h. Acquisition of Capital Infrastructure
    - i. Power Generating Facilities
    - ii. Buildings

### **FISCAL IMPACT:**

The proposed not-to-exceed amount of \$1,185,000 for the period from February 1, 2025, to January 31, 2028, includes an annual cost of \$352,000 in the first year and annual escalation of 5%. The proposed cost is an increase from the third amendment which included an annual not-to-exceed amount of \$277,000 for the period from July 1, 2023, to June 30, 2024. The proposed not-to-exceed amount was the most competitive proposal received from the RFPs that were submitted, in which, for example, a proposal was received that included an annual fee greater than \$1 million.

This increase is also in alignment with the combination of cost-of-living increases resulting from inflation and an increased level of accounting services needed due to Community Power growth and development including, for example, the inclusion of accounting for the capital costs related to the \$124 million Regional Energy Network program and the inclusion of significantly more staff and professional services to accommodate agency growth.

### **COMMITTEE REVIEW:**

The Finance and Risk Management Committee (FRMC) on January 16, 2025, recommended Board approval of the contract with Maher Accountancy for general accounting professional services in an amount not-to-exceed \$1,131,000 from February

1, 2025, through January 31, 2028, and for two optional one-year extensions in an amount not-to-exceed \$377,000 each respective year, for a total not-to-exceed amount of \$1,885,000, and authorize the Chief Executive Officer to execute the contract.

During the FRMC meeting, the term of the contract was clarified to be three years ending on January 31, 2028. Additionally, since the FRMC meeting, in negotiation with Maher Accountancy, the proposed not-to-exceed amount is proposed to increase from \$1,131,000 from February 1, 2025, through January 31, 2028, to an up-to-amount not-to-exceed \$1,185,000. The total not-to-exceed amount is proposed to increase from \$1,885,000, to an up-to-amount not-to-exceed \$2,069,700. The proposed increase is due to a 5% annual escalation starting in the second year of the contract to account for cost-of-living increases and additional scope as Community Power continues to expand.

**ATTACHMENTS:**

Attachment A: Professional Services Agreement Between San Diego Community Power and Maher Accountancy.



# ITEM 15

# ATTACHMENT A

## **SAN DIEGO COMMUNITY POWER PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement”) is made and entered into on January XX, 2025, by and between **SAN DIEGO COMMUNITY POWER**, a California joint powers authority (“Community Power”) and **MAHER ACCOUNTANCY**, a California corporation (“Consultant”). Community Power 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 Community Power on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing the services reflected in Exhibit A and is familiar with the plans of Community Power.
- B. Community Power desires to engage Consultant to render such professional services for general accounting services, financial statements audit support, financial operational assistance, and grants management support (“Project”) as detailed in Exhibit A.

### **AGREEMENT**

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

1.1 General Scope of Project. Consultant promises and agrees to furnish to Community Power all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the Project. The Project is more particularly described in Exhibit A attached hereto. The Project 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 February 1, 2025 to January 31, 2028 unless earlier terminated as provided herein. Consultant shall complete the Project within the term of this Agreement and shall meet any other established schedules and deadlines.

1.2.1 Option to Extend. SDCP shall have the option to extend the term of this Agreement for two (2) additional terms of one (1) year each commencing on the first day after the expiration date of the previous term. SDCP may exercise the options by giving Consultant written notice not later than sixty (60) days prior to the expiration of the then current term. If SDCP exercises the options to extend, Consultant’s allowable compensation under Section 3.1 shall reset for each additional term.

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

2.1 Control and Payment of Subordinates; Independent Contractor. The Project shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Project subject to the requirements of this Agreement. Community Power 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 Project under this Agreement on behalf of Consultant shall also not be employees of Community Power 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 the Project 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 Project. Consultant shall perform the Project expeditiously, within the term of this Agreement. Consultant represents that it has the professional and technical personnel required to perform the Project in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, Community Power shall respond to Consultant's submittals in a timely manner. Upon request of Community Power, Consultant shall provide a more detailed schedule of anticipated performance to meet the schedule of the Project.

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

2.4 Substitution of Key Personnel. Consultant has represented to Community Power that certain key personnel will perform and coordinate the Project 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 Community Power. In the event that Community Power and Consultant cannot agree as to the substitution of key personnel, Community Power shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Project in a manner acceptable to Community Power, or who are determined by the Community Power 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 Community Power. The key personnel for performance of this Agreement are as follows:

**Michael Maher, Vice President**

2.5 Community Power's Representative. In its capacity as investment manager, Consultant shall receive all instructions, directions and other communications on Community Power's behalf respecting Community Power's account from Eric Washington, Community Power Chief Financial Officer & Treasurer ("Community Power Representative"). Consultant is hereby authorized to rely and act upon all such instructions, directions and communications from such Representative or any agent of such Representative.

2.6 Consultant's Representative. Consultant hereby designates Michael Maher, or his 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 Project, 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 Project under this Agreement.

2.7 Coordination of Project. Consultant agrees to work closely with Community Power

staff in the performance of Project and shall be available to Community Power's staff, consultants and other staff at all reasonable times.

2.8 Standard of Care; Performance of Employees. Consultant shall perform the Project 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 Project. Consultant warrants that all employees and sub-contractors shall have sufficient skill and experience to perform the Project 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 Project, 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 Community Power, 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 Community Power 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 Project in a manner acceptable to Community Power, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform 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, 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 the Project. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to Community Power, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Community Power, 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 Project under this Agreement until it has provided evidence satisfactory to Community Power that it has secured all insurance required under this section, in a form and with insurance companies acceptable to Community Power. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to Community Power 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. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by Community Power 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 Community Power, 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 Community Power’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) Community Power, 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 Community Power, 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 Community Power, 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 Community Power, 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 Community Power, 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 Community Power (if agreed to in a written contract or agreement) before Community Power’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 Community Power 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 Community Power 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 Community Power, 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, Community Power has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Community Power will be promptly reimbursed by Consultant or Community Power will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Community Power may cancel this Agreement. Community Power may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(vi) Neither Community Power 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 Community Power, 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 Community Power. Consultant shall guarantee that, at the option of Community Power, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Community Power, 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 Community Power.

2.10.8 Verification of Coverage. Consultant shall furnish Community Power with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to Community Power. 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 Community Power if requested. All certificates and endorsements must be received and approved by Community Power before work commences. Community Power 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 Community Power 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 Community Power as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Community Power 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 the Project, 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 the Project rendered under this Agreement at the rates set forth in Exhibit B, attached hereto. The total compensation shall not exceed one million, one hundred eight-five thousand dollars **\$1,185,000.00** for the initial term and an additional four hundred seven thousand three hundred dollars **\$407,300.00** and four hundred twenty seven thousand four hundred **\$427,400** for each respective, optional one-year extended term (for a total a total not-to-exceed amount of **\$2,069,700.00**) without written approval of Community Power's CEO. 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 Community Power a monthly itemized statement which indicates work completed and hours of the Project 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. Community Power 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 Community Power.

3.4 Extra Work. At any time during the term of this Agreement, Community Power may request that Consultant perform Extra Work. As used herein, “**Extra Work**” means any work which is determined by Community Power 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 Community Power’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 Community Power 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. Community Power 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 Community Power, 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, Community Power 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 the Project 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, Community Power 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 reports and other communications required hereunder to be in writing shall be delivered in person, or sent by first-class mail postage prepaid, by overnight courier, by confirmed facsimile with original to follow or by confirmed electronic mail with proof of receipt to the addresses set forth below. Either party to this Agreement may, by written notice given at any time, designate a different address for the receipt of reports and other communications due hereunder:

**Consultant: Maher Accountancy**  
Attn: Michael Maher,

Vice President  
1101 Fifth Avenue  
Suite 200  
San Rafael, CA 94901

**Community Power: San Diego Community Power**

Attn: Eric W. Washington, Chief  
Financial Officer & Treasurer  
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.

5.2.1 **Electronic Delivery.** From time to time, Consultant may be required to deliver certain documents to Community Power such as account information, notices and required disclosures. Community Power hereby consents to Consultant's use of electronic means, such as email, to make such delivery. This delivery may include notification of the availability of such document(s) on a website, and Community Power agrees that such document(s) on a website, and Community Power agrees that such notification will constitute "delivery". Community Power further agrees to provide Consultant with Community Power's email address(s) and to keep this information current at all times by promptly notifying Consultant of any change in email address(s).

SDCP email addresses:  
EWashington@sdcommunitypower.org;  
TManglicmot@sdcommunitypower.org

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 Community Power 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 Community Power 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 Community Power. Community Power 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 Community Power's sole risk.

5.3.2 Intellectual Property. In addition, Community Power 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.

Community Power 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 Community Power, 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 Community Power.

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 Community Power.

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.

Community Power 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 Confidential Relationship. The terms and conditions of this Agreement, and all information and advice furnished by either party to the other shall be treated as confidential and shall not be disclosed to third parties except (i) as required by law, rule, or regulation, (ii) as requested by a regulatory authority, (iii) for disclosures by either party of information that has become public by means other than wrongful conduct by such party or its officers, employees, or other personnel, (iv) for disclosures by either party to its legal counsel, accountants, or other professional advisers, (v) as necessary for Consultant to carry out its responsibilities hereunder, or (vi) as otherwise expressly agreed by the parties.

5.3.4 Infringement Indemnification. Consultant shall defend, indemnify and hold Community Power, 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 Community Power 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 Community Power's choosing), indemnify and hold the Community Power, 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, arising solely out of the negligence, recklessness, 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 Community Power, its directors, officials, officers, employees, agents or volunteers arising solely out of the negligence, recklessness, 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 pay and satisfy any judgment, award or decree that may be rendered against Community Power or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding arising solely out of the negligence, recklessness, 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 reimburse Community Power 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. Except for actions or claims arising out of willful misconduct, Consultant's obligation to indemnify shall be restricted to insurance proceeds, if any, received by Consultant. 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 Community Power's Right to Employ Other Consultants. Community Power 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 Community Power. 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 Community Power 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, Community Power shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of Community Power, during the term of his or her service with Community Power, 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.

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 Project.

5.20 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.

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

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

**[SIGNATURES ON FOLLOWING PAGE]**

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

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

SAN DIEGO COMMUNITY POWER

MAHER ACCOUNTANCY

By: \_\_\_\_\_  
Karin Burns, Chief Executive Officer

By: \_\_\_\_\_  
Michael Maher, Vice President

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Veera Tyagi,  
Community Power General Counsel

ATTEST:

By: \_\_\_\_\_  
Maricela Hernandez  
Community Power Clerk of the Board



## EXHIBIT A

### SCOPE OF SERVICES

#### A. Monthly Financial Operational Assistance:

- a. Maintain accounting system, accounts payable system and processes.
- b. Maintain the general ledger with proper support and documentation, including:
  - i. Posting accrued revenue, cash receipts, accounts payable, cash disbursements, payroll, accrued expenses, aggregate customer billings, etc.
  - ii. Prepare or maintain the following monthly analysis regarding general ledger account balances:
    1. Reconciliation to statements from CCA's financial institution for cash activity and balances;
    2. Reconciliation of customer data manager reports of customer activity and accounts receivable aging to general ledger;
    3. Computation of estimated user fees earned but not billed as of the end of the reporting period;
    4. Schedule of depreciation of capital assets;
    5. Aged schedule of accounts payable;
    6. Schedules of details regarding all remaining balance sheet accounts.
- c. Manage accounts payable: Provides documentation of management review, proper segregation of duties, and access to source data. Ensures that required authorization is documented and that account coding is correct. Also provides for internal control to authorize the release of payment, providing an additional safeguard. Additionally provides weekly and monthly support for ongoing payments to SD Community Power's net-energy-metering customers.
- d. Assist with compliance of fiscal provisions of non-energy vendor contracts for services. Before remitting vendor invoices for management approval, verifies that each vendor invoice is compliant with contract provisions regarding time periods, rates, and financial limits.
- e. Provide periodic and year-to-date financial statements in compliance preferably with GAAP (without disclosures). The financial statements will be considered a compilation engagement in accordance with the Statements on Standards for Accounting and Review Services promulgated by the AICPA.

- f. Provide monthly financial statements with comparison to budget.
    - i. Provide timely budget amendments and insight suggestions.
  - g. Filing annual information returns, such as form 1099/1096's.
  - h. Prepare and file various compliance reports for state and local agencies such as user taxes, energy surcharges and state controller reports including financial transaction and government compensation in California.
  - i. Assist in treasury function and assist staff with development of the operating budget.
- B. Financial Statement Audit Support
- a. Draft financial statements, notes, and MD&A letter
  - b. Prepare audit workpapers
  - c. Coordinate with SD Community Power and the auditor.
- C. Potential Out of Scope Items (To be Paid from Contingency Funds)
- a. Grant Management Support
    - i. Provides ongoing support in grant billing and reconciliation in compliance with grant-specific local, state and federal grant guidelines
    - ii. Assists in the preparation of SD Community Power's single audit, if necessary
    - iii. Maintains financial statements for the San Diego Regional Energy Network
    - iv. Other grant support as needed
  - b. Territory Expansion
  - c. Change in Data Manager
  - d. Non-Financial Statement Audit Assistance
  - e. Customer Software Development and Enhancements
    - i. i.e. PowerBudget development
  - f. Change in Software
    - i. Payroll Software
    - ii. Accounting Software
  - g. Significant increase or change to Customer Programs
  - h. Acquisition of Capital Infrastructure
    - i. Power Generating Facilities
    - ii. Buildings

## EXHIBIT B

### COMPENSATION BILLING RATES

Dollars, \$	Year 1	Year 2	Year 3	Year 4 (Optional)	Year 5 (Optional)
Monthly Fee	\$ 28,000.00	\$ 29,400.00	\$ 30,900.00	\$ 32,400.00	\$ 34,000.00
Annual Audit Fee	\$ 16,000.00	\$ 16,800.00	\$ 17,600.00	\$ 18,500.00	\$ 19,400.00
Annual Total	\$ 352,000.00	\$ 369,600.00	\$ 388,400.00	\$ 407,300.00	\$ 427,400.00
Initial Three-Year Term Contingency	\$ 75,000.00				
<b>Three Year Up-to-Amount Not-to-Exceed</b>	<b>\$ 1,185,000.00</b>				
Year 4 /Year 5 Additional Contingency	\$ 50,000.00				
<b>Total Up-to-Amount Not-to-Exceed</b>	<b>\$ 2,069,700.00</b>				

#### **Reimbursable Expenses in addition to Compensation above:**

Subscription and transaction fees for cloud-based accounts payable system (Bill.com) will be borne by Community Power. This will be a pass-through charge with no mark-up. Maher Accountancy will not pass through costs related to license fees for its own staff use.

**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 16**

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**TO:** Board of Directors

**FROM:** Eric Washington, Chief Financial Officer

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Authorize the Chief Executive Officer to Enter into a Sublease Agreement with CORELATION, INC. for Office Space

**DATE:** January 23, 2025

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**RECOMMENDATION:**

Authorize the Chief Executive Officer to enter into a sublease agreement with CORELATION, INC., for office space located at 2305 Historic Decatur Road, San Diego, CA, in the amount of \$638,208, plus utilities, for 24 months, with a potential option to extend for an additional year, and related documents.

**BACKGROUND:**

On June 1, 2022, San Diego Community Power (Community Power) entered into a Sublease Agreement to rent 4,811 square feet of office space with Nuvve Holding Corporation at 2488 Historic Decatur Road, Suite 250, San Diego, California 92106. The term of the Sublease Agreement was for six months, effective June 1, 2022, with two potential six-month extensions at a rate of \$14,500 per month.

Subsequently, On November 1, 2022, Community Power entered into new Sublease Agreements with Nuvve Holding Corporation with a term through October 31, 2025. The new Sublease Agreements includes the original space, Suite 250, and an additional 2,408 square feet of space located at 2488 Historic Decatur Road, Suite 230, San Diego, California 92106. The monthly cost for this sublease agreements was \$31,041.70.

Then, on September 28, 2023, Community Power entered into a sublease agreement with CORELATION, INC. at 2305 Historic Decatur Road Suite 200, San Diego, California, 92106. The monthly cost for the Sublease Agreement is \$51,390. This current office space is able to accommodate Community Power's current staff and is Community Power's first dedicated area only for Community Power with 13,704 square feet. It includes private offices, conference rooms and a shared community space. The term of the agreement for the current office is for two years from November 1, 2023, to October 31, 2025, with an option to extend to October 31, 2026.

## **ANALYSIS AND DISCUSSION:**

To ensure the continued and uninterrupted operation of Community Power, staff recommends the Board of Directors (Board) authorize the Chief Executive Officer to enter into a sublease agreement with CORELATION, INC., under the terms identified in Attachment A- the Letter of Intent (LOI), to expand Community Power's office space located at 2305 Historic Decatur Road, San Diego, CA. This sublease agreement will have a 24-month term from the negotiated commencement date with an option to extend for one additional year. Draft terms also include three months of free rent for the initial term.

The monthly cost for this new space is \$26,592, or \$3 per square foot, before additional electricity costs which will also be passed to Community Power. The proposed office space is planned to include 8,864 square feet and will be located on the first floor of Community Power's existing office space.

The current office space, encompassing 13,704 square feet, provides capacity to accommodate Community Power's current staff of 72. Community Power's number of employees are expected to increase to 80 per the staff authorized by the Board in the Fiscal Year 2024-25 budget and is planned to grow in subsequent fiscal years. To accommodate planned expansion and to accommodate associated needs for conference rooms and offices, Community Power will require a larger office footprint. We are therefore proposing to enter into a second sublease agreement with CORELATION, INC. to expand Community Power's office space.

After careful consideration of several factors including cost and the importance of uninterrupted operations, Community Power determined that expanding in the same building and current office space represents the most cost-effective and efficient solution for our current and future needs.

Staff therefore recommends that the Board authorize the Chief Executive Officer to enter into a sublease agreement with CORELATION, INC., under the terms of the LOI, in the amount of \$638,208, plus utilities, for 24 months, and authorize the Chief Executive Officer to execute the sublease agreement, a potential option to extend for an additional year, and related documents.

## **FISCAL IMPACT:**

Community Power's current Sublease agreement to lease office space is at a rate of \$51,390 per month for a dedicated office space that accommodates Community Power's current employees of 72. Community Power is expected to reach 80 employees by June 2025 with a proposal to expand further and is therefore currently near capacity at its current office space. The proposed Sublease Agreements is at an increased rate of \$26,592 per month for a second dedicated office space that can accommodate Community Power's long-term staffing needs. Should Community Power move into the second office space by March 1, 2025, this action will add \$26,592 in costs to the Fiscal

Year 2024-25 budget given that the draft terms include three months of free rent for the initial term. Staff believes the new Sublease Agreement is necessary due to Community Power's growth.

**COMMITTEE REVIEW:**

N/A

**ATTACHMENTS:**

A: Letter of Intent – Proposal to Sublease – San Diego Community Power - 2305  
Historic Decatur Road, Suite 103, San Diego, California 92106

# ITEM 16

# ATTACHMENT A

January 6, 2025

Mr. Nick Norris

**RE:** Proposal to Sublease – San Diego Community Power  
2305 Historic Decatur Road, Suite 103  
San Diego, California 92106

Dear Nick:

Corelation, Inc., ("Sublandlord") has authorized Range SD, as Sublandlord's Broker of Record, to provide this letter of intent outlining the business terms under which Sublandlord would be willing to negotiate a Sublease agreement within the Building and Premises with San Diego Community Power ("Subtenant"):

**(1) PREMISES:**

- a) Location: 2305 Historic Decatur Road, Suite 103
- b) Square Footage: Tenant shall sublease an 8,864 RSF portion of the 1<sup>st</sup> Floor located in Suite 103.

**(2) TERM:**

- a) Term: The Sublease shall have an initial term ("Term") of twenty-four (24) months commencing on the Sublease Commencement Date as determined pursuant to Section 5 below.
- b) Option to Extend: Subtenant shall have one (1) consecutive option to extend the Term of the Sublease (the "Extension Option"), with said option being for an additional twelve (12) months. The Base Rent for each Extension Option shall be at \$3.00 + Electricity per rentable square foot of the Premises.

**(3) SUBLEASE COMMENCEMENT DATE:**

The "Sublease Commencement Date" shall be estimated February 1, 2025. Subtenant shall be provided occupancy, at no charge, to the Premises so long as a sublease agreement is fully executed.

**(4) RENT:**

- a) Base Rent: \$3.00 + Electricity per rentable square foot as of the Sublease Commencement Date, on a Net of Electricity basis, inclusive of janitorial services to the Premises. The monthly Base Rent shall remain flat during the Term with no annual escalations.



- b) Abated Base Rent: Four (4) months from months two (2) through five (5).
- c) Holdover: Subtenant shall have the right at the expiration of the Sublease and upon sixty (60) days prior written notice to Sublandlord to extend the Term of the Sublease for no more than four (4) months at the same rental rate in effect upon the scheduled Sublease Expiration Date.
- d) Operating Expenses: Subtenant shall not be required to pay its pro rata share of Operating Expenses for the Sublease Term.

**(5) SECURITY DEPOSIT:**

No security deposit shall be required of Tenant.

**(6) FIRST MONTH'S RENT:**

The Base Rent for the first (1<sup>st</sup>) month of the Term shall be payable upon the Sublease Commencement Date.

**(7) USE:**

Subtenant shall have the right to use and occupy the Premises for office operations and for general business purposes, including without limitation, any other lawful purpose consistent with the character of the building.

**(8) ASSIGNMENT AND SUBLETTING: PER MASTER LEASE**

**(9) BUILDING AND SERVICES: PER MASTER LEASE**

**(10) PARKING PRIVILEGES: PER MASTER LEASE**

**(11) SIGNAGE:**

Subject to approval from the Master Lessor, Sublessor shall provide Sublessee all standard lobby directory and suite identification signage per the Master Lease.

**(12) EXISTING FURNITURE, FIXTURES, AND EQUIPMENT OF PREMISES:**

Subtenant shall have the right, at no additional cost to Subtenant, to utilize the existing Furniture, Fixtures, including telecommunications cabling, ("FF&E") located in the Premises. Subtenant shall have no responsibility to remove existing Furniture, Fixtures, and telecommunications cabling at the end of the Sublease Term.

**(13) RESTORATION:**

Subtenant shall not be required to restore any improvements within the Premises upon the expiration of the Sublease or any extensions thereof unless approved alterations are made to the Premises and restoration is required as part of approval. Subtenant shall have the right to remove any and all trade fixtures installed during occupancy and any improvements or alterations considered to be the intellectual property or trade secrets of Subtenant.

**(14) BROKERAGE FEE:**

Chuck Reiter of CBRE exclusively represents Tenant with respect to the transaction proposed herein. In the event a Sublease is consummated between Sublandlord and Subtenant, Sublandlord shall pay CBRE a market brokerage fee equal to four percent (4%) of the aggregate rent for the Term of the Sublease. Said commission shall be due 50% upon sublease execution and 50% upon sublease commencement.

**Sublandlord and Subtenant acknowledge that this Letter of Intent is not a Lease and is non-binding, and that it is intended as the basis for negotiation of a Sublease. The Sublease shall be subject to Master Landlord, Sublandlord and Subtenant's approval in each party's sole discretion and only a fully executed Sublease shall bind the parties.**

Range and Corelation, Inc. appreciate your consideration of this Letter of Intent. If you have any questions with respect to the foregoing, or if you require any additional information, please contact me at (619) 850-9413. We look forward to receiving your response no later seven (7) days from the date of this letter.

***Submitted electronically by:***

**Range SD**

**Nick Norris, DRE License No 01911071**



**SAN DIEGO COMMUNITY POWER**  
**Staff Report – Item 17**

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**TO:** Board of Directors

**FROM:** Xiomalys Crespo, Sr. Community Engagement Manager

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Approval of Community Advisory Committee Member for County of San Diego (Unincorporated)

**DATE:** January 23, 2025

---

**RECOMMENDATION:**

Approve the Appointment of Ross Pike to the Community Advisory Committee (CAC) for the County of San Diego (Unincorporated).

**BACKGROUND:**

Per Section 5.10.3 of the San Diego Community Power (Community Power) Joint Powers Authority (JPA) Agreement:

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

**ANALYSIS AND DISCUSSION:**

At both the July 2023 CAC and Board of Directors meetings, staff announced a CAC vacancy for the County of San Diego (Unincorporated). Since, staff has promoted this and other vacancies through Community Power's social media channels and the CAC, as well as directly engaging with staff, advocacy organizations, and the general public during networking and tabling events in all of our member agencies.

If approved by the Board with a simple majority vote, staff will work with the representative to conduct their oath of office and onboarding prior to the next CAC meeting on February

13, 2025. Staff will also update Attachment A: CAC Roster and Seat Assignments, which is publicly available through Community Power's website, to include the new representative.

As of the drafting of this report, seats for the City of Chula Vista and the City of La Mesa remain vacant. Applications for vacant seats remain open until filled.

**FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

N/A

**ATTACHMENTS:**

A: CAC Roster and Seat Assignments

# ITEM 17

# ATTACHMENT A



## Community Advisory Committee Roster

Member Agency	Name	Appointed	Current Term	Term Ends
San Diego	Luis Montero-Adams	August 2024	First	2025
	Matthew Vasilakis (Chair)	April 2020	Second	2026
Chula Vista	Anthony Sclafani	July 2022	First	2025
	<b>Vacant</b>	-	-	-
La Mesa	<b>Vacant</b>	-	-	-
	David Harris	April 2020	Second	2026
Encinitas	Gary L. Jahns	April 2020	Second	2025
	Tara Hammond	April 2020	Second	2026
Imperial Beach	Kenneth Hoyt	May 2024	First	2025
	Ilian Sandoval	November 2023	First	2026
County of San Diego (unincorporated)	Peter Andersen	February 2022	First	2025
	<b>Vacant</b>	-	-	-
National City	Aida Castañeda (Secretary)	February 2022	First	2025
	Lawrence Emerson (Vice-Chair)	February 2022	Second	2026

Terms end at the end of every June. Members are subject to two, three-year consecutive terms. They are also subject to CAC Policies and Procedures. Odd seats are displayed in blue.



## **SAN DIEGO COMMUNITY POWER Staff Report – Item 18**

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**TO:** Board of Directors

**FROM:** Lucas Utouh, Senior Director of Data Analytics and Customer Operations  
Aaron Lu, Rates and Strategy Manager

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Update on 2025 Projected Rate Changes

**DATE:** January 23, 2025

---

### **RECOMMENDATION:**

Receive and file an update on San Diego Community Power's (Community Power) 2025 projected rate changes.

### **BACKGROUND:**

As Community Power prepares to develop and propose rates for 2025, it is critical to understand current San Diego Gas and Electric (SDG&E) generation and the Power Charge Indifference Adjustment (PCIA) rates – as both SDG&E bundled and PCIA rates play a role in Community Power's rate setting process, particularly as it relates to Community Power's competitiveness. Community Power's Board of Directors last adjusted Community Power commodity/generation rates on January 18, 2024, and those rates came into effect as of February 1, 2024. Community Power's Board of Directors also adopted Power100 Green-e Certified and PowerBase services, which came into effect as of July 1, 2024.

### **ANALYSIS AND DISCUSSION:**

#### *Rate Setting Process*

Community Power will establish rates sufficient to recover all costs related to the operations of our service and the Board of Directors has the ultimate responsibility for setting the electric generation rates for Community Power's customers. The Chief Executive Officer, in cooperation with staff and appropriate advisors, consultants, and committees of the Board, is responsible for developing proposed rates for the Board to consider before finalization. For Community Power to be fiscally sustainable, the final approved rates should, at a minimum, meet the annual revenue requirements developed by Community Power, including any reserves or coverage requirements set forth in policy

and/or loan covenants/debt service. The Board has the flexibility to consider rate adjustments, provided that the overall revenue requirement is achieved.

In alignment with the Rate Development Policy, adopted by the Board of Directors on November 17, 2022, Community Power considers the following objectives in its rate setting framework:

- Cost Recovery,
- Reserves,
- Rate Competitiveness and Customer Value,
- Rate Stability,
- Equity Among Customers,
- Rate Structure Simplicity and Comparability,
- Transparency,
- Avoidance of Cost Shifting, and
- Cost of Service.

Additionally, per previous Board direction, Community Power staff will, if possible, recommend rates that remain competitive with SDG&E service.

It is important to note rates consist of several components, only one of which Community Power has control over, i.e., Community Power's generation rate. The chart below is an example of a current rate tariff composition for a residential customer to illustrate the various components that affect rates and make up a total customer bill. Staff tracks the changes to the PCIA rate, as it is the above market cost of power associated with SDG&E's portfolio that both SDG&E's bundled customers and Community Power's customers, who have departed SDG&E commodity service, pay and can affect Community Power's overall headroom or competitiveness. Above market refers to expenditures for generation resources that cannot be fully recovered through sales of these resources at current market prices.

#### Time of Use – TOUDR-Residential

Residential: TOUDR	SDG&E 44.8% Renewable	SDCP PowerBase 45% Renewable	SDCP PowerOn 54.2% Renewable + 12.8% Carbon Free	SDCP Power100 100% Renewable
Generation Rate (\$/kWh)	\$0.13878	\$0.12997	\$0.14690	\$0.15690
SDG&E Delivery Rate (\$/kWh)	\$0.25528	\$0.25525	\$0.25525	\$0.25525
SDG&E PCIA (\$/kWh)	\$0.00207	\$0.00727	\$0.00727	\$0.00727
Franchise Fees (\$/%)	\$0.00435	\$0.00435	\$0.00435	\$0.00435
Total Electricity Cost (\$/kWh)	\$0.40048	\$0.39684	\$0.41377	\$0.42377
Average Monthly Bill (\$)	<b>\$150.98</b>	<b>\$149.61</b>	<b>\$155.99</b>	<b>\$159.76</b>

Average Monthly Usage: 377kWh



### *2025 Rates Timeline*

Community Power, like most Community Choice Aggregators (CCAs), usually adjusts rates annually or in response to utility rate adjustments. There is a very narrow window of time between when SDG&E sets their 2025 rates and when Community Power needs updated rates available for 2025. The expected schedule for Community Power's rate setting is as follows:

- May 15, 2024: SDG&E filed its 2025 Energy Resource Recovery Account (ERRA) forecast application.
- May 30, 2024: Community Power's Board of Directors adopted Power100 Green-e Certified and PowerBase services, which came into effect as of July 1, 2024.
- October 21, 2024: SDG&E filed its Updated 2025 ERRA forecast application.
- November 15, 2024: SDG&E filed Advice Letter 4548-E: Annual Electric Regulatory Account Update and Preliminary January 1, 2025, Rates Outlook.
- December 5 and 12, 2024: Community Power staff briefed its Community Advisory Committee and Board of Directors of SDG&E's 2025 projected and PCIA rates changes.
- January 16 and 23, 2025: Community Power staff presents Community Power's 2025 projected rate changes to the Community Advisory and Finance Risk Management Committees and Board of Directors.
- January 31, 2025: SDG&E files its Consolidated Filing to Implement February 1, 2025, Electric Rates advice letter.
- February 1, 2025: SDG&E's expected effective date of implementation of its delivery and generation rates as well as the PCIA.
- February 7, 2025: Community Power Board adopts 2025 rates, to be retroactively effective on February 1, 2025.

### *2025 Bundled & PCIA Rates Projections*

Based on SDG&E's October 2025 Updated forecast application, their projected bundled system average generation rates were expected to increase by 0.07% as of January 1, 2025. On November 15, 2024, SDG&E filed a regulatory account update advice letter which adjusted their projected bundled system average generation rates to increase by 6.20%. SDG&E attributes bundled system average generation rates increase in 2025 primarily to actualization of balancing account projections and impacts from the General Rate Case.

Recent bundled generation rate changes and these projections are articulated in the table below.

Customer Class	SDG&E Avg. Commodity Rate (\$/kWh)						SDG&E Avg. Commodity Rate Change (%)			
	1/1/2023	1/1/2024	3/1/2024	10/1/2024*	1/1/2025**	1/1/2025***	1/1/2023 - 1/1/2024	1/1/2024 - 3/1/2024	3/1/2024 - 10/1/2024	10/1/2024 - 1/1/2025
Residential	0.1967	0.1514	0.1517	0.1517	0.1519	0.1622	-23.03%	0.19%	0.00%	6.96%
Small Commercial	0.1742	0.1283	0.1285	0.1285	0.1288	0.1385	-26.34%	0.19%	0.00%	7.78%
M/L C&I	0.2039	0.1578	0.1581	0.1581	0.1578	0.1660	-22.61%	0.18%	0.00%	5.04%
Agricultural	0.1455	0.1120	0.1122	0.1122	0.1116	0.1174	-23.00%	0.18%	0.00%	4.61%
Lighting	0.1286	0.0991	0.0993	0.0993	0.0995	0.1063	-22.92%	0.19%	0.00%	7.07%
<b>System Total</b>	<b>0.1947</b>	<b>0.1499</b>	<b>0.1502</b>	<b>0.1502</b>	<b>0.1503</b>	<b>0.1595</b>	<b>-23.03%</b>	<b>0.19%</b>	<b>0.00%</b>	<b>6.20%</b>

\* SDG&E 10/1/2024 rate change did not revise commodity rates and PCIA.

\*\* SDG&E proposed 1/1/2025 rates from Oct. 2025 ERRRA Update, filed 10/21/2024.

\*\*\* SDG&E proposed 1/1/2025 rates from Nov. Consolidated Rates Filing, filed 11/15/2024.

Based on our high-level forecasts and the filings by SDG&E, Community Power is expecting in 2025 to see a decrease in PCIA rates for all vintages relevant to Community Power customers, including Vintage Year 2020 (Phase 1 & 2 customers), Vintage Year 2021 (Phase 3 customers), and Vintage Year 2022 (Phase 4 customers).

On December 9, 2024, SDG&E requested a one-month extension from the CPUC to implement its 2025 Consolidated Rate advice letter and to delay the rate adjustments reflected in that advice letter from being effective as of January 1, 2025 to February 1, 2025. The CPUC approved the request because the extension is necessary to avoid potential customer confusion due to fluctuating rates and provides the needed time to plan and implement the consolidated electric rate changes from the recent approved General Rate Case decision.

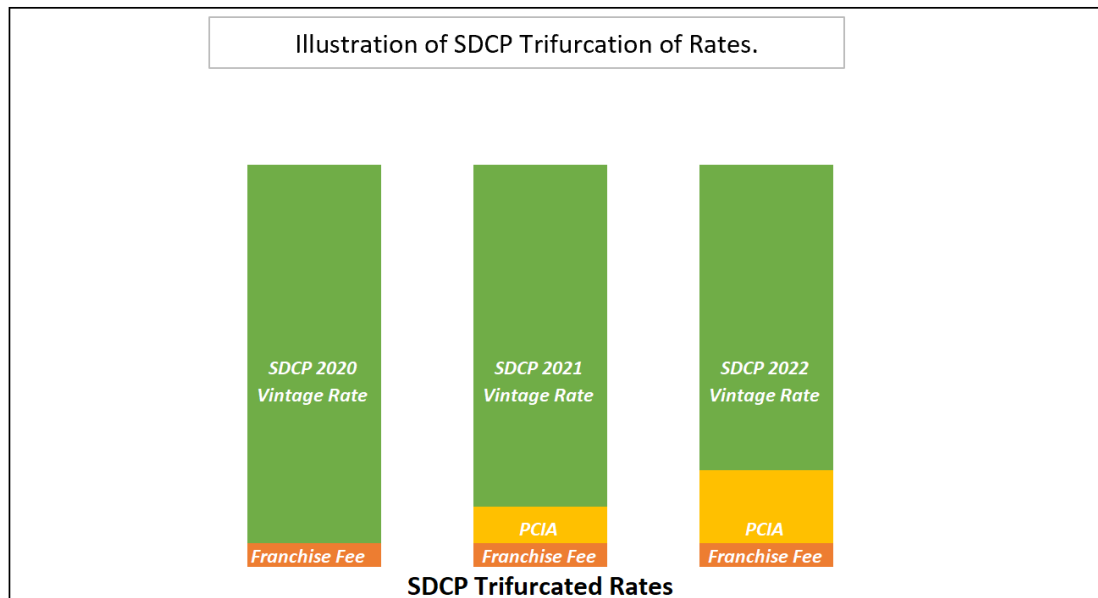
### *2025 Rate Setting Mechanics*

In accordance with SDG&E's definition of load transfer from bundled service to Community Power's service per Schedule CCA-CRS, our Phase 1 and 2 customers' Vintage Year is 2020, our Phase 3 customers' Vintage Year is 2021, and our Phase 4 customers' Vintage Year is 2022. Vintaging denotes the year during which SDG&E recognizes the transition of our customers from bundled service into our service and creates a mechanism for the assessment of PCIA rate.

### *Next Steps*

Staff will continue to monitor all updates from SDG&E/CPUC to be able to better analyze and recommend rate changes that are reflective of all the inputs articulated in CPUC's decision(s). Staff expects to present rates to the Community Power Board for adoption on February 7, 2025 that both meet the revenue and prudent reserve needs of Community Power as well as maintain value for our customers.

As a result of the substantial deltas expected between PCIA rates for Vintage Years 2020, 2021, and 2022, staff will also recommend to the Board to continue to trifurcate three sets of rates for 2025. This trifurcation will maintain a fair, equitable, and balanced rate structure that does not create winners and losers across our customers with differing vintage years as illustrated below.



**FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

The Community Advisory and Finance and Risk Management Committees reviewed this item at the January 16, 2025, meetings.

**ATTACHMENTS:**

N/A



## **SAN DIEGO COMMUNITY POWER**

### **Staff Report – Item 19**

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**TO:** Board of Directors

**FROM:** Laura Fernandez, Director of Regulatory and Legislative Affairs  
Aisha Cervantes-Cissna, Senior Policy Manager  
Patrick Welch, Senior Legislative Manager  
Stephen Gunther, Regulatory Manager  
Dean Kinports, Senior strategic Policy Manager

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Update on Regulatory and Legislative Affairs

**DATE:** January 23, 2025

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#### **RECOMMENDATION:**

Receive and file the update on regulatory and legislative affairs.

#### **BACKGROUND:**

Staff will provide monthly updates via written staff report to the Board of Directors regarding SDCP regulatory and legislative engagement. Staff also intends to provide quarterly presentations to the Board of Directors. The quarterly update for Quarter 1 2025 will be presented at the January 23, 2025 Board of Directors meeting. The quarterly presentation is intended to provide a verbal overview of important highlights from the preceding quarter. Monthly staff reports provide more in-depth and timely regulatory and legislative updates.

#### **ANALYSIS AND DISCUSSION:**

##### **A) Regulatory Updates**

###### ***Renewables Portfolio Standard***

On December 24, 2024, the California Public Utilities Commission (CPUC) issued a [Final Decision](#) on the 2024 Renewables Portfolio Standard (RPS) Procurement Plans filed by load serving entities. [Community Power's Draft 2024 RPS Procurement Plan](#), which was filed in July 2024, was accepted and deemed final in the Final Decision. However, the CPUC also identified Community Power's filing as having some inappropriately redacted information, and as such, Community Power must revise its 2024 RPS Plan by January 23, 2025.

## ***Integrated Energy Policy Report***

On December 12, 2024, the California Energy Commission hosted a workshop to provide an overview of draft annual and hourly electricity demand forecast results used in the [2024 Integrated Energy Policy Report](#), which informs several planning processes and resource adequacy obligations. CalCCA filed comments on the workshop on January 2, 2025, recommending that the Commission:

- Supplant or supplement its bottom-up forecast development for long-term needs with historical top-down load information in the near-term to ensure load forecast stability for resource adequacy obligations; and
- Document the work of the Demand Analysis Working Group (DAWG) to ensure all LSEs benefit from decisions or discussions regarding certain programs and how they impact the demand forecast.

The Commission is expected to post final forecast results for proposed adoption on January 21, 2025.

## ***Disconnections***

### ***Disconnections Phase 2 Scoping Ruling***

On October 30, 2024, the CPUC issued a [Ruling](#) seeking comments regarding the implementation of (1) [Senate Bill \(SB\) 1142](#) and (2) potential additional disconnection protections during extreme weather events. Opening comments on the Ruling were due November 22, 2024. Reply comments are due January 17, 2025. A workshop on this Ruling was held on December 12, 2024. Opening comments on the workshop are due January 10, 2025. Reply comments on the workshop are due January 17, 2025.

SB 1142, enacted in September 2024, requires Investor-Owned Utilities (IOUs) to reconnect customers who agree to a payment plan. SB 1142 directs the Commission to determine additional implementation details associated with reconnection. A [motion](#) filed by The Utility Reform Network (TURN) in August 2024 seeks to enhance protections against disconnection during extreme heat. The motion proposes modifying rules to prevent disconnections when temperatures exceed 100 degrees Fahrenheit or when the "Major" risk-level is forecasted on the National Weather Service's "HeatRisk" index. It also suggests that electric IOUs proactively contact disconnected customers under these conditions to offer reconnection without requiring any upfront payment, provided the customer consents to a payment plan.

[CalCCA](#) filed opening comments on November 22, 2024, taking the following positions:

- When restoring service to a customer who was disconnected due to nonpayment, IOUs should offer customers all payment plans for which they qualify.
- The CPUC should hire a third party to perform a holistic examination of disconnection protections and payment programs.

- The CPUC should adopt TURN's proposed rule modifications; the HeatRisk index should be adopted, and a similar indexing system for low temperature risks (NWS Cold Threats).

The IOUs (SDG&E, SCE, and PG&E) do not support changes to existing disconnection policies. The Public Advocates Office recommends offering all payment plans for reconnection without upfront fees and calls for an evaluation of existing plans. They suggest more data is needed before adopting TURN's changes. The Utility Consumers' Action Network advocates for limiting IOU profits to tackle the root causes of disconnections due to arrearages. The Utility Reform Network and allies push for a full spectrum of payment options upon reconnection and thorough financial assessments before disconnections.

The workshop presentations largely reflected the comments summarized above. Commissioner Houck presided over the workshop and expressed great interest in accounting for a customer's ability to pay before terminating service due to nonpayment.

## **B) State Legislative Activities Update**

### ***Monitoring the New Legislative Session, Which Will Likely Focus on Affordability***

The 2025 legislative year officially began on December 2, marking the start of the first year of a two-year legislative session. Legislators have until February 21 to introduce new bills. SDCP staff will monitor legislative activities related to electricity and energy that could impact SDCP and its customers. SDCP staff will analyze introduced legislation and take positions in accordance with the Board approved Legislative and Regulatory [Platform](#). The Legislature is expected to consider fewer bills this year due to legislative rule changes. During the 2025-26 legislative session, Assemblymembers will only be allowed to introduce 35 bills, down from 50 in the prior legislative session. Senators will also be limited to 35 bills, down from 40 the session prior. The goal of the rule change is to make better use of the Legislature's limited bandwidth.

SDCP's legislative engagement generally focuses on the work of the Senate Committee on Energy, Utilities and Communications (SEUC) and the Assembly Committee on Utilities and Energy (U&E). Both committees analyze and vote on legislation that impacts SDCP operations and customers. They are very active committees. Last year, SEUC held 10 hearings to review and vote on at least 65 pieces of legislation, and U&E held 13 hearings to review and vote on 74 pieces of legislation.

There is a new chair of SEUC, Senator Josh Becker (D-Menlo-Park). He pledged bold action on clean energy and affordability and called for smart regulations. U&E will continue to be led by Assemblymember Petrie-Norris (D-Irvine), who said she'd continue to focus on lowering costs and building critical infrastructure. There aren't any Senators

representing SDCP's service area on SEUC. The full membership of U&E has not been announced.

Consistent with the focus on affordability from the chairs of SEUC and U&E, the Speaker of the Assembly also urged lawmakers to do more to lower energy costs. In a speech, he told his legislative colleagues that California must lead on climate, but not on the backs of poor and working people.

### ***SDCP Spearheads Letter to Support Distributed Electricity Backup Assets Funding in 2025 State Budget***

SDCP led a group of seven other CCAs on a letter to the state's Director of Finance (DOF) that advocated for funding for the California Energy Commission's (CEC) Distributed Electricity Backup Assets (DEBA). The DOF leads putting together the Governor's annual budget proposals. DEBA was created in 2022 as part of the state's electric Strategic Reliability Reserve (SRR) to fund clean distributed energy assets that can help with load reduction and in emergency grid scenarios. If funded, DEBA could be a state-level funding avenue that could be pursued for programs like Solar Battery Savings. There would be an application and scoring process if the program is funded. The 2024 State Budget included a commitment to fund DEBA with \$200 million, but the upcoming 2025 State Budget must follow through and provide the actual appropriation to the CEC.

There isn't a guarantee that the 2024 State Budget commitment to DEBA will be included in the 2025 State Budget. While the Legislative Analyst's Office (LAO) [predicts](#) that the 2025 State Budget is on track to be roughly balanced, there is no capacity for new spending commitments due to projected deficits in future years. However, DEBA would likely be funded by revenue from the Greenhouse Gas Reduction Fund, which is a special fund separate from the state's General Fund that was analyzed by the LAO.

## **C) Federal Activities Update**

### ***Monitoring Congressional Activity on the Future of the Inflation Reduction Act***

The 119<sup>th</sup> Congress was sworn in on January 3. Both houses of Congress are now controlled by the Republican party. Democrats controlled the Senate and Republicans controlled the House in the prior Congress. Among other items, the new Congress is expected to attempt to address energy issues and may seek to make changes to the Inflation Reduction Act (IRA), which among other things, established tax credits for renewable energy generation and energy storage. SDCP staff and federal representatives will monitor IRA related developments and engage on issues when they are in accordance with SDCP's Legislative and Regulatory Platform.

### **FISCAL IMPACT:**

N/A

**COMMITTEE REVIEW:**

N/A

**ATTACHMENTS:**

A: Distributed Electricity Backup Assets (DEBA) Letter



# ITEM 19

# ATTACHMENT A

December 4, 2024

Joe Stephenshaw  
Director, Department of Finance  
1021 O Street, Suite 3110  
Sacramento, CA 95814

**Subject:** Funding the California Energy Commission's (CEC) Distributed Electricity Backup Assets (DEBA) Program Will Help Ratepayer Affordability

Dear Director Stephenshaw,

The 2024 Budget Act included a \$200 million set aside from the Greenhouse Gas Reduction Fund (GGRF) for DEBA in 2025-26. We urge you to work with the Governor to follow through on this commitment and include the appropriation in the January budget proposal.

Funding for DEBA has become even more critical considering increasing electric rates and the Governor's recent executive order to curb electricity costs (Executive Order N-5-24). According to the CPUC's Public Advocate's Office, bundled electricity rates have increased by between 82% to 110% in the past decade. Funding DEBA aligns with the Executive Order's goal to "take decisive action to rein in" ratepayer costs and ensure the prioritization of the "most efficient and effective opportunities to meet energy demand with clean resources."

DEBA was created in 2022 as part of the Strategic Reliability Reserve (SRR) to fund local community power projects through "the construction of cleaner and more efficient distributed energy assets" that can serve as on-call emergency supply or load reduction while minimizing cost exposure to ratepayers (PRC Section 25791). The SRR was created to ensure electricity reliability during extreme weather events from climate change to help support California's leadership "in driving the affordable and equitable transition to a clean reliable energy system and economy" (PRC Section 25790). DEBA, through a prior appropriation, has funded projects to increase the capacity of existing thermal generators, but has yet to have sufficient funds for distributed asset projects.

Funding DEBA will help reduce cost pressure on ratepayers by supporting the acquisition of additional clean customer resources that can be enrolled in virtual power plants (VPPs). California's CCAs are at the forefront of building VPPs, which rely on aggregated customer resources – like batteries and thermostats – that are critical to achieving state clean energy goals, reducing costs for ratepayers, supporting grid reliability & resilience, and advancing environmental justice through accessible clean energy. By enabling customers to participate in automated dispatch, VPPs can collectively provide capacity through demand reduction at peak hours when energy is most expensive, thereby benefiting all customers.

In closing, not only does funding DEBA balance ratepayer affordability with continuing progress towards meeting clean energy goals, but it also aligns with the Governor's Clean Energy Transition plan, which calls for technologies to "help customers access lower rates through demand flexibility by using power during times of the day when costs are the lowest."

Thank you for considering our request. If you have any questions, please contact Amy Costa, at [amy@fullmoonstrategies.com](mailto:amy@fullmoonstrategies.com).

Sincerely,



Patrick Welch  
Senior Legislative Manager  
San Diego Community Power



Greg Wade  
Chief Executive Officer  
Clean Energy Alliance



Marc Hershman  
Director of Government Affairs  
Peninsula Clean Energy



Mitch Sears  
Chief Executive Officer  
Valley Clean Energy



Vincent Wiraatmadja  
Senior Legislative Manager  
MCE



Bena Chang  
Director of Government & Legislative  
Affairs  
Silicon Valley Clean Energy



Adam Jorge  
Senior Decarbonization Policy Manager  
Sonoma Clean Power



Scott Green  
Senior Gov Affairs Manager  
San Jose Clean Energy

Cc: The Honorable Mike McGuire, President Pro Tempore, State Senate  
The Honorable Scott Wiener, Chair, Senate Committee on Budget & Fiscal Review  
The Honorable Robert Rivas, Speaker, State Assembly  
The Honorable Jessie Gabriel, Chair, Assembly Committee on Budget  
Siva Gunda, Vice Chair, California Energy Commission  
Grant Mack, Deputy Legislative Secretary, Office of Governor Newsom



## **SAN DIEGO COMMUNITY POWER Staff Report – Item 20**

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**TO:** Board of Directors

**FROM:** Emily Fisher, Senior Program Manager  
Colin Santulli, Director of Programs

**VIA:** Karin Burns, Chief Executive Officer

**SUBJECT:** Update on Solar Battery Savings Program

**DATE:** January 23, 2025

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### **RECOMMENDATION:**

Receive and file the update on Community Power's Solar Battery Savings Program.

### **BACKGROUND:**

The Net Billing Tariff ("NBT") NBT, also known as the Solar Billing Plan, is the successor to Net Energy Metering ("NEM") 2.0. It was established by the California Public Utilities Commission (CPUC) in December 2022 and went into effect for all new customers installing solar systems or any other renewable self-generation system on or after April 15, 2023.

The San Diego Community Power Board of Directors adopted the NBT policy at the October 2023 Board of Directors meeting, replacing NEM 2.0 as the default billing mechanism for accounts with newly installed generating systems (e.g., solar, wind, biomass, geothermal or other renewable resources). In December 2023, NBT was operationalized within Community Power's billing system for customers with new generating systems and/or for customers who had reached the conclusion of their 20-year legacy period with NEM. This new approach for compensating renewable energy generation is intended to promote grid reliability, thus increasing the value of solar systems paired with battery storage.

To make these clean energy investments more affordable for customers, and support the continued growth of the regional solar market, Community Power committed to create a program to incentivize solar and storage with the following goals:

1. Install solar and storage systems in single-family homes throughout the service territory (goal of 50% of incentives going to Communities of Concern)
2. Support clean energy and reliability
3. Leverage non-Community Power incentives for customers

#### 4. Build strong relationships with customers and the industry

A summary of the key program parameters is shown below.

*Table 1. Program Parameters*

	Market Rate	Non-Market Rate (CARE/FERA <sup>1</sup> & Communities of Concern)
<b>Solar Upfront Incentive</b>	N/A	Up to \$450/kW-AC <sup>2</sup>
<b>Storage Upfront Incentive</b>	\$350/kWh (nameplate useable capacity)	Up to \$500/kWh <sup>3</sup> (nameplate useable capacity)
<b>Storage Performance Incentive</b>	\$0.10/kWh (based on actual performance over the dispatch period during on-peak periods)	
<b># of Events</b>	Daily (weekday only or weekday+weekend)	
<b>Battery Enrollment</b>	Participants can select the percentage of their battery's usable capacity to enroll in the program, with a minimum requirement of 50% (with restrictions based on product manufacturer selected)	
<b>Op-Out</b>	Battery can underperform by up to 10% of the total enrolled capacity per month	
<b>Unenrollment</b>	There will be a prorated claw back associated with the upfront incentive if the participant chooses to unenroll within the first five years.	

<sup>1</sup>California Alternate Rates for Energy ("CARE") and Family Electric Rate Assistance Program ("FERA")

<sup>2</sup>Up to based on if customer is eligible for other solar incentives, e.g., Disadvantaged Communities–Single-Family Affordable Solar Homes ("DAC-SASH") and City of San Diego Equity Program

<sup>3</sup>Up to based on if customer is eligible for other upfront storage incentives, e.g., Self-Generation Incentive Program ("SGIP")

## ANALYSIS AND DISCUSSION:

### Program Development

The local residential solar industry is a key stakeholder in the success of the Solar Battery Savings program. As the primary contact to the customer for the program, approved contractors are required to be well versed in program guidelines and have regular access to Community Power staff as questions arise. As such, staff mandated the completion of a program training for all participating contractors. The training outlines who Community Power is, customer eligibility, program design and structure, mechanics of how to submit applications, technical specifications of allowable projects and expected system performance, and overarching contractor expectations (e.g., allowable communication and marketing practices). In addition to completing the mandatory training, interested contractors are required to apply to participate and agree to uphold all program requirements.

Community Power staff began offering in-person program trainings to contractors in mid-June of 2024, leveraging industry partnerships to maximize participation. In June and July, staff held four in-person contractor trainings at a local distributor's training room and International Brotherhood of Electrical Workers (IBEW) 569's training facility, training 44 contractors in total during this time. A recording of the training is available to interested contractors to participate at their convenience.

Battery manufacturers had similar required trainings to participate in the program. Staff held a specific program training for battery manufacturers interested in participating in the program at the end of June. A recording of the battery manufacturer training is available for interested stakeholders. Additionally, as battery manufacturers are approved, staff meets with them individually to address questions and understand how they plan to operationalize and ensure a successful path forward for data sharing.

### Program Launch and Implementation

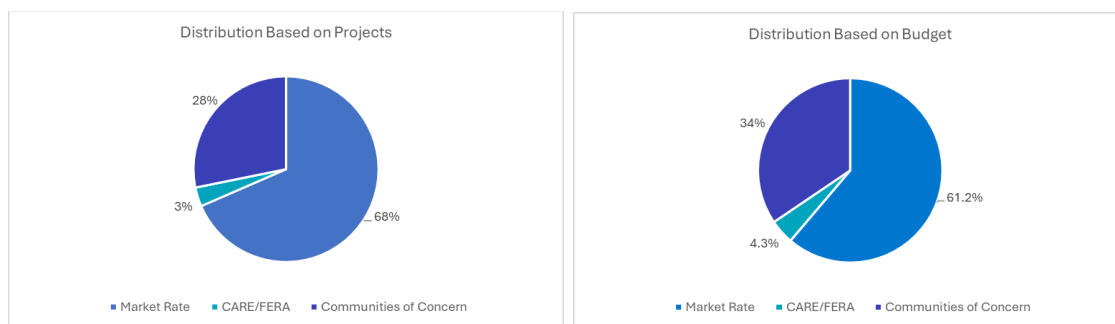
Solar Battery Savings began accepting project applications on July 28, 2024. The launch of the program garnered significant interest with over 500 applications submitted within the first 24 hours. The total number of approvals are as follows, with an 87% approval rate:

*Table 2. Program Approvals*

	# of Projects
Total Approved Projects	1,636
Total Approved Batteries	2,249

The 2,249 batteries are expected to provide 7.2MW of peak load reduction daily during on-peak periods for up to 10 years. Customers will continue to receive performance incentives annually for up to 10 years as long as they remain enrolled.

As of January 6, 2025, 480 projects have received the upfront incentive payment (29% of all approved projects) based on post-installation documentation submittals. The average upfront incentive was \$6,870 per home, with the average being slightly lower for market rate customers (\$6,150) and higher for non-market rate customers (\$8,469). The distribution based on project count and budget across market rate, CARE/FERA customers and Communities of Concern was as follows:



*Figure 1. Distribution Across Market Rate, CARE/FERA and Communities of Concern*

Of the approved projects, 59% are for existing Net Energy Metering (NEM) customers, while 41% are for Net Billing Tariff (NBT) customers. 14% of NEM customers added solar of less than 10% of their current system size or 1 kW to expand their existing solar system in addition to adding a battery, allowing them to remain on their current NEM tariff.

Projects were approved in all seven Community Power member agencies. Table 3 shows approved application distribution by member agency.

*Table 3. Distribution Across Member Agencies*

Member Agency	# of Applications	% of Applications	% of SF Homes <sup>1</sup>
Chula Vista	105	6.4%	10%
Encinitas	96	5.9%	3.6%
Imperial Beach	6	0.004%	0.7%
National City	3	0.002%	1.3%
La Mesa	63	3.8%	2.7%
San Diego	826	50.5%	50%
Unincorporated San Diego County	537	32.8%	31.8%
<b>Total</b>	<b>1,636</b>		

<sup>1</sup>The “% of SF Homes” column identifies single-family homes in each member agency as a percentage of all single family homes in Community Power territory based on an internal analysis using 2023 census data

### **Battery Manufacturer Engagement**

Community Power approved 14 battery manufacturers for the program who offered a total of 46 different approved batteries. The approved batteries vary in size from three kilowatt-hours to 23.5 kilowatt-hours. Many of the manufacturers are headquartered in California, with one in San Diego County. Only eight of the 14 battery manufacturers had batteries installed (or planned for install) with the initial round of funding. Please see below for the number of batteries approved for installation based on manufacturer.

*Table 4. Participation by Battery Manufacturers*

OEM	# of Batteries Approved
Tesla	1,857 (83%)
Enphase	254 (11%)
sonnen	101 (4.5%)
FranklinWH	12 (<1%)
Canadian Solar	3 (<1%)
StackRack	7 (<1%)
PointGuard	4 (<1%)
NeoVolta	7 (<1%)
<b>Total</b>	<b>2,249</b>

### **Contractor Engagement**

A diverse group of 50 contractors were approved to participate in the program. 37% were Diverse Business Enterprises and 4% were union. Participating contractors vary greatly in company size:

- 42% have 10 employees or less
- 42% have 10-50 employees
- 16% have more than 50 employees



Of approved contractors, 38 submitted at least one project. Table 5 lists participation of contractors who had at least 15 projects submitted; 18 contractors had less than 15 projects submitted.

*Table 5. Participation Across Contractors*

Contractor Name	Total Projects	% of Projects
Baker Home Energy	410	25%
TMAG Industries Inc, DBA Stellar Solar	176	11%
Sunline Energy	144	9%
Aloha Solar Power & Electrical Services Inc.	131	8%
KBI Electric, Inc. DBA Build Brothers	85	5%
Semper Solaris	76	5%
SolHome	64	4%
Homegrown Energy Solutions LLC	60	4%
Tesla, Inc.	59	4%
Solar Tech Energy	50	3%
Cosmic Solar Inc.	47	3%
Solare Energy, Inc.	40	2%
Johnson Solar	33	2%
SunVantage	31	2%
Sattler Solar Inc	25	2%
G C Electric Solar	24	1%
Alltech Solar, Inc.	21	1%
Palomar Solar LTD	18	1%
Incentive Solar	18	1%
San Diego Solar Inc	15	1%

#### **NEXT STEPS:**

Staff is preparing for an initial program evaluation in the first quarter of 2025 to inform a program relaunch this calendar year. Additionally, staff is exploring non-residential pilot project concepts.

#### **FISCAL IMPACT:**

N/A

#### **COMMITTEE REVIEW:**

An update was also presented at the January 16, 2025, Community Advisory Committee meeting.

#### **ATTACHMENTS:**

N/A