



STAFF REPORT

CITY OF SOLANA BEACH

TO: Honorable Mayor and City Councilmembers
FROM: Gregory Wade, City Manager
MEETING DATE: May 24, 2017
ORIGINATING DEPT: City Manager's Department
SUBJECT: **Consideration of Resolutions 2017-043 and 2017-044 Authorizing Execution of Task Order Contracts with The Energy Authority (TEA) and Calpine for Community Choice Aggregation (CCA) Consultant Services**

BACKGROUND:

Community Choice Aggregation (CCA), authorized by Assembly Bill 117, is a state law that allows cities, counties and other authorized entities to aggregate electricity demand within their jurisdictions in order to purchase and/or generate alternative energy supplies for residents and businesses within their jurisdiction while maintaining the existing electricity provider for transmission and distribution services. The goal of a CCA is to provide a higher percentage of renewable energy electricity at competitive and potentially cheaper rates than existing Investor Owned Utilities (IOUs), while giving consumers local choices and promoting the development of renewable power sources and local job growth. Since 2011, City Staff has been tasked by the City Council to research and analyze the possibility of developing a viable CCA for Solana Beach.

The City Council first placed researching CCA in the Council Work Plan in Fiscal Year 2012/2013 as an "Unprioritized Environmental Sustainability Issue". The following year, Council elevated the item to a "Priority Issue" and directed Staff to more closely monitor the progress of the San Diego Energy District, a local group studying the viability of the regional formation of a CCA in San Diego County.

On January 14, 2015, the City Council passed a Resolution of Support to continue studying the feasibility of the formation of a CCA and to demonstrate to the region that the City is committed to developing and implementing a local CCA. Soon after, the City was approached by a company, California Clean Power (CCP), who proposed preparing a feasibility/technical analysis report, at no cost to the City, to study the

CITY COUNCIL ACTION:

AGENDA ITEM C.1.

potential of a CCA in Solana Beach. This is the first necessary step in the process of developing a CCA.

On May 11, 2016, the City Council received the final Technical Study that demonstrated that a CCA, either through a public/private partnership or through a regional Joint Powers Authority (JPA), would be feasible for Solana Beach (a copy of the Technical Study is at http://solana-beach.hdso.net/docs/CCA/CCA_TechnicalAnalysis.pdf). During the meeting, the City Council directed Staff to prepare a request for proposals to seek comprehensive consultant services to further assess, finance, develop, implement and operate a CCA on behalf of the City. Council also directed Staff to continue meeting with neighboring cities including Del Mar, Encinitas, Carlsbad and Oceanside to discuss the possibility of partnering in a JPA or other regional CCA in the future. Staff then began working on developing a Request for Qualifications/Proposals (RFQ/P) to seek qualified consultants to assist with the development and ongoing administration of a local CCA.

On June 22, 2016, the City Council unanimously authorized the release of the RFQ/P to solicit proposals for the development and ongoing administration of a local CCA program. Staff came back to the City Council on September 14, 2016 with the results of the RFQ/P. The City received three (3) proposals and evaluated the RFQ/P submittals with assistance from outside expert consultants.

On November 16, 2016, the City Council authorized and directed the City Manager to negotiate a professional services agreement with The Energy Authority (TEA) and Calpine (formerly Noble Energy Services) to develop, finance, implement and manage a local CCA program. Collectively, TEA and Calpine have more than 36 years of experience in energy procurement, including operations, risk management and regulatory compliance and over 8 years of direct experience with CCA formation and operations and are currently providing services to seven of the active CCA's in California.

This item is before the City Council to consider adopting Resolution 2017-043 (Attachment 1) and Resolution 2017-044 (Attachment 2) authorizing the execution of professional services agreements and all other necessary contracts negotiated by City with TEA and Calpine and entering into Phase 1 of CCA outreach, development and implementation efforts.

DISCUSSION:

Community Choice Aggregation (CCA) is not a new phenomenon and several CCA's are currently operating successfully in California and in other states. To date, there are eight (8) fully operational CCA programs in California:

- Marin Clean Energy
- Sonoma Clean Power
- Lancaster Choice Energy

- CleanPowerSF
- Peninsula Clean Energy
- Redwood Coast Energy Authority
- Silicon Valley Clean Energy
- Apple Valley Choice Energy

There are another six (6) emerging CCA programs actively being developed:

- Central Coast Power
- East Bay Community Energy
- Monterey Bay Community Power
- San Jose Clean Energy
- South Bay Clean Power
- Western Riverside Association of Governments (WRCOG), Coachella Valley Association of Governments (CVAG) and San Bernardino Association of Governments (SANBAG) Cooperative
- Pico Rivera Innovative Municipal Energy
- San Jacinto Power

Until recently, most customers in the San Diego region had no choice in purchasing higher percentages of renewable energy. Aside from some high energy users who engage in Direct Access purchase of their energy, most customers must buy their energy from San Diego Gas and Electric (SDG&E), which has essentially enjoyed a monopoly of the energy market in San Diego County. A CCA, however, provides local choices to residents and businesses and also allows customers to remain with SDG&E if they choose to do so. Additionally, a CCA provides a local, transparent rate-setting process controlled by the local agency (in this case the City Council) with input from the community. A CCA also provides the ability to procure a much higher percentage of renewable energy, which is essential in order for the City to meet its state-mandated greenhouse gas reduction targets and climate action goals.

CCA Technical Study

Existing CCA programs have demonstrated the substantial benefits for residents and businesses, the environment, and the economy. The City's Technical Study completed in May 2016 demonstrated the feasibility of a City CCA and how the City could develop and administer a local CCA program that provides the benefits of this growing public power movement for its residents and businesses. The City acknowledges that the Technical Study was conducted by a consultant that may have had interest in pursuing administration of a future City CCA program. However, it was also imperative to have this technical analysis conducted by experienced consultants in order to determine if the energy load of the community would be sufficient to implement a successful CCA program. This was a vital and necessary initial step to assess the feasibility of a CCA. Given that the results of the Technical Study demonstrated that a CCA is feasible, the

City Council was unanimous in moving into the next stage of the process – the development and release of the RFQ/P.

It is important to note, however, that the RFQ/P specifically included a provision that the proposing entities should not rely solely on the conclusions reached in the Technical Study and, therefore, should consider the development of their own technical analysis to independently determine the viability of a successful CCA program for Solana Beach. Since the proposing entities would be responsible for providing all of the upfront costs of establishing the program, including credit support necessary to establish the CCA program, it was expected that the responding consultant teams would include their own analysis of the City's energy loads as part of the services provided. Staff has discussed this with TEA and they have confirmed that this would be part of their analysis during Phase 1 of the CCA development process. This will be explained in further detail later in this Staff Report.

RFQ/P Key Components

As a reminder, Staff modeled the RFQ/P on a similar RFP in Humboldt County (Redwood Coast Energy Authority). The following are some of the key components of the services requested in the RFQ/P:

- All necessary funding for the establishment, implementation and ongoing administration of the CCA must be provided. This includes procuring the energy and securing any necessary bonds and insurance. City funds will not be impacted or at risk at any point of the CCA formation (i.e., for Phase 1 services as discussed later in this report) and during ongoing CCA operations and administration if the City launches a CCA.
- A robust community outreach and engagement strategy would be developed and implemented prior to any CCA launch and, if launched, continue as needed throughout the life of the CCA.
- All necessary legal and regulatory function support including, but not limited to, submittal of all required filings with the California Public Utility Commission (CPUC).
- Negotiating/securing all energy procurement agreements.
- All necessary data management (back of the house) services required to ensure that the data sharing and billing practices are seamless and timely between the CCA and SDG&E would be provided.
- All ongoing energy procurement services to implement the program would be provided.
- Customer service functions including a dedicated call center for CCA customers would be provided.
- Outline of a detailed process for potential expansion of the program to include neighboring jurisdictions and how this might be implemented in the future would be provided.

- A Risk Analysis to analyze potential risks associated with the CCA program would be provided along with an outline of risk-mitigation measures.

Third-Party Peer Review of Technical Study

Given that the Technical Study was carried out by a consultant group once interested in providing potential CCA services to the City, Staff felt it was important have the Technical Study separately evaluated by an independent third party. Therefore, in an abundance of caution and to ensure the integrity of the process, the City retained the services of EES Consulting Inc., a respected third-party consultant that has no professional relationship with the author of the Technical Study, California Clean Power, or any other party of interest related to the RFQ/P, to conduct a peer review of the City's Technical Study (Attachment 3). The peer review concluded that "Overall, the CCA Study provided an adequate level of analysis for decision-making given the early stage of consideration by the City. In the opinion of EES, the CCA Study is a good basis for making policy decisions about proceeding with the CCA for the City." More specifically, EES made the following observations:

- The cost of renewables and the escalation rate appear to be too high.
- The PCIA (Power Charge Indifference Adjustment) levels are expected to be higher in 2017 and beyond.
- The SDG&E rate is too simplistic.

EES concluded that the three items listed above would more than likely cancel each other out in terms of overall cost impact, but that would be determined with certainty after the analysis was updated in Phase 1 of the CCA development. The peer review report also identified a few key areas that would need further updating and assessment as the City moves forward in the process. These include evaluation of the risks associated with different levels of PCIA, the level of rates for SDG&E, the regulatory risks related to CCAs, the availability and price of renewable resources and the financial risks to the CCA related to financing or credit. These risks are common to all CCAs and have been successfully mitigated by the current operating CCAs in California. The City is aware that the Technical Study is over a year old now and has always anticipated that the rates/assumptions would have to be updated; therefore, further analysis was specifically requested in responses to the RFQ/P. These analyses would be included in Phase 1 of the CCA development at no additional cost to the City. After review of the results of the updated analysis, the City (or CCA consultant team) may elect not to move forward into the next phase of CCA development and there would be no cost impact to the City.

CCA Expert Consultants

Staff retained services from two (2) outside CCA experts to assist with all phases of CCA program evaluation, including contract negotiations and possible CCA development. These experts have extensive experience with actual CCA development, implementation and operation as well as experience with complex energy power

purchase agreement negotiations. The first expert is Barbara Boswell, who successfully developed and administered the City of Lancaster's "Lancaster Choice Energy (LCE)" CCA program, which was the first single-city CCA in California. Ms. Boswell was involved from the very beginning of the development of LCE, which gives her the unique skill set to understand the complex and specialized knowledge required to develop and implement a successful CCA. The City also retained the services of Stephen Hall, an attorney with Troutman Sanders LLP, who specializes in the energy industry and has worked with many of the successful CCA's in California. Mr. Hall has an extensive energy regulatory background and specializes in structuring and negotiating complex energy transactions representing independent power producers, renewable energy developers, investment banks, power marketers and major utilities. These two consultants bring an extremely high level of expertise to the City in their analysis of the proposals along with real world experience with CCA negotiations, operations and knowledge of what is necessary to ensure the evaluation, formation and operation of a successful CCA program.

Ms. Boswell and Mr. Hall (Consultants) assisted Staff with reviewing the submitted proposals, interviewing the top firms, selecting the highest ranked consultant team and negotiating the two contracts being presented to the City Council for their consideration. The Consultants' experience and knowledge was invaluable throughout the process and instrumental in ensuring the contracts contained the necessary language and structure to develop the type of CCA program that was envisioned by the City and as directed by the City Council. These contracts contain the necessary legal and financial protections to ensure that the City itself will not be legally or financially at risk at any time should the City decide to move forward with implementation of a local CCA. One of the key elements of the contract that eliminates risk to the City's General Fund, is the concept of a "lock-box" into which all CCA proceeds would be placed and which would provide the sole credit support and security for CCA operations while protecting the City itself from any and all liability. This process was first instituted by Lancaster Choice Energy under the guidance of the Consultants assisting the City and is also being followed by many new CCA programs currently operating and under development.

The Energy Authority (TEA) and Calpine (formerly Noble Energy Solutions)

As directed by the City Council, the City has been in negotiations with TEA and Calpine to develop, finance and administer a local CCA program for Solana Beach. Staff (including our Consultants), TEA and Calpine have been in negotiations since December and have come to terms on the contracts and/or proposed task orders being presented to the City Council for consideration. The City has determined that separate contracts with TEA and Calpine would be the most efficient and effective approach for the long term continuity and success of a CCA program should the City Council ultimately elect to launch a CCA. Separate contracts would also give the City maximum flexibility if, should a CCA be launched, the City chooses to modify the structure of the CCA in the future (train and hire additional staff to administer the program, form a JPA, etc.).

CCA Development Phasing

As previously mentioned the City developed the RFQ/P in a way that would require no upfront funding or credit support from the City and would place that obligation on the selected consultant team. As proposed by TEA and Calpine, the CCA development was separated into three (3) phases with a goal for program launch within the first year followed by provision of two to five years of power supply and all CCA operational services. The phases are broken up as follows:

Phase 1	Phase 2	Phase 3
Program Development	Program Launch	Operations
0-6 Months	6-12 Months	Years 2-5
<ul style="list-style-type: none"> • Technical study completed • Community and local government outreach • Implementation Plan drafted • Operations, budget, and staffing plan developed 	<ul style="list-style-type: none"> • Implementation Plan certified • Data management, accounting, and back office functions established • Utility service agreement, regulatory registrations, bond posting • Power procurement and contracting • Rate design/rate setting • Public outreach and marketing campaign • Customer notifications/enrollment period 	<ul style="list-style-type: none"> • Ongoing power supply services (scheduling, etc.) • Customer account management • Community outreach and marketing • Regulatory and legislative affairs • Net energy metering and feed-in tariff • Enrollment of additional communities

TEA Agreement

As negotiated by the City and TEA, the above phases of work have been outlined out in a Resource Management Agreement which includes two Task Orders (Task Orders 1 and 2) that specify the terms of the contract and the manner in which the services would be provided (see Attachment 5). The Council is being asked to consider authorizing the execution of the Resource Management Agreement (RMA) as well as Task Order 1 and Task Order 2 which are included as attachments to the agreement.

Resource Management Agreement (RMA)

The RMA sets forth the general terms of the contract including the scope of work, the term of agreement, termination authorities and other general rights and responsibilities of both the City and TEA (the "Parties"). The initial term of the RMA is for five (5) years with allowable automatic one-year extensions thereafter. Pursuant to the RMA, both Task Orders 1 and 2 would be executed by the Parties and become effective concurrently with the RMA. However, the City would still have the ability to terminate the RMA as well as each Task Order as provided for in the agreements and as described below.

Task Order 1 (Phases 1 and 2)

Pursuant to the RMA and Task Order 1, Phase 1 services would be completed with no upfront costs or credit backing required from the City. As noted in the chart above, Phase 1 will consist of completing the technical review (updating the technical analysis as recommended by the third-party peer review), conducting the community outreach and engagement program, drafting the Implementation Plan and developing the operations, budget and staffing plan. This phase will include public discussions of all aspects of the CCA development including the renewable energy content levels, customer rate structure and CCA revenue expectations needed to satisfy specified reserve requirements and, ultimately, to be used for renewable energy programs/projects for the benefit of the City.

During Phase 1, TEA will record the hours expended on a time and materials basis for all activities associated with this phase and have agreed to defer the payment of all Phase 1 fees until Phase 3, should the City elect to move forward. After completion of the Phase 1 services, the City can, however, choose not to proceed and terminate the RMA prior to initiating Phase 2. Should the City decide at that point to terminate the RMA and provides notice to TEA within 30 days, the City would owe nothing for the Phase 1 services. If, at the conclusion Phase 1, the Parties decide to move forward into Phase 2, costs will again be tracked and recorded by TEA for these services but would also be deferred for payment during Phase 3. If the City elects to terminate the RMA at any time after initiation of Phase 2, the costs incurred by TEA prior to termination would be due and payable to TEA for services rendered to that point.

Task Order 2 (Phase 3)

Task Order 2 sets out the required services of Phase 3 as outlined above. As with the Phase 2 services, these services would only occur after an affirmative decision by the City Council to launch the CCA. During Phase 3, TEA would provide program operation services including power purchase, program administration and compliance, would complete the required Integrated Resource Plan and would provide other support services. TEA would also continue to provide community outreach throughout this phase of services and would also continue provide ongoing risk analysis and management.

Another key component of Phases 2 and 3 under Task Order 2 is the proposed Credit Solution that would both establish the CCA as an independent entity separate from the City and, as directed by Council, would protect the City from any financial risk or exposure. During these phases, and assuming a CCA is launched, TEA would use its existing credit facilities to provide credit support for transactions made by TEA on behalf of the CCA. This will include the initial cost of obtaining electricity and related attributes, providing required security for participation in CAISO (California Independent System Operator), the deferral of fees as noted above, and satisfying requests for credit support from counterparties with respect to transactions made by TEA as principal in those transactions on behalf of the CCA.

Lock Box Pledge Account & Reserve Account

As previously mentioned, a primary component of providing credit support and financial backing for both TEA and the CCA itself, is the establishment of a Lock Box Account. The Lock Box would be the account into which all customer payments would be placed. Under the terms of the agreements and Task Order 2, the CCA would grant to TEA a first priority security interest in and lien upon the funds and payments made by the CCA customers to SDG&E (the "Customer Payments"), which would subsequently be deposited by SDG&E into the Lock Box Account. These funds would provide operational security as well as funding for ongoing energy purchases made by TEA on behalf of the CCA. The Lock Box Account would be held at a commercial bank regulated by the Federal Deposit Insurance Corporation ("FDIC") and would be required to meet specified ratings and security requirements including the ability to issue standby letters of credit.

In order to provide TEA with the necessary credit support, the Customer Payments deposited into the Lock Box Account would be distributed according to a specified order of priority or "waterfall" provisions outlined in Task Order 2. The first priorities for payment would be to pay TEA for billed power purchases and charges related to CAISO transactions, then to pay for billed power purchase for monthly transactions and next to pay for operational fees and any deferred fees owed for Phase 1 and Phase 2 services. After those payments, funds would then be retained within the Lock Box to build and maintain a balance of \$200,000 to provide Operating Funding, after which administrative overhead costs would be paid for operation of the CCA. The next priority would be to set aside funds in a Reserve Account to provide additional credit support and CCA stabilization. During the first twelve (12) months of power procurement by TEA, customer payments would be deposited from the Lock Box into a Reserve Account until the balance is equal to the "Reserve Requirement," the initial amount of which would be \$550,000, which is targeted to be achieved by the end of the first twelve months of power deliveries. After this Reserve Requirement is met, funds would then be available for use by the CCA. After the first 12 months, the Reserve Requirement is subject to adjustment by TEA based upon TEA's credit exposure to the CCA.

The Operating Funding of \$200,000 would be maintained during the Initial Term of the agreement and thereafter as long as TEA continues to provide all credit support. The Parties would further agree that the Operating Funding would be provided solely from the Customer Payments and that the CCA would not be obligated to deposit any funds to establish, maintain or restore the Operating Funding amount from any other City or taxpayer source.

TEA Compensation

For the operational services required to be performed by TEA after launch of the CCA, Task Order 2 would provide for a monthly payment of \$17,583, in addition to any deferred fees from Phases 1 and 2, which would be \$6,700 per month paid over forty-six (46) months. Compensation would also be provided for additional credit support in

the form of a "Credit Solution Fee" paid monthly on a per megawatt hour ("MWh") basis. This Credit Solution Fee would be paid at either \$1.00 per MWh (if TEA is acting as the principal for power procurement transactions) or at \$0.25 per MWh (if TEA is acting as an agent, rather than principal, in those transactions). Based upon the most recent load data of the City, this would equate to approximately \$80,350 per year at the \$1.00 per MWh rate.

Calpine Agreement

Under the proposed Master Professional Services Agreement (MPSA), Calpine would provide Data Management (DM) Services to the CCA, if launched (see Attachment 6). Calpine has also agreed to participate in the initial outreach efforts prior to any CCA launch at no cost for these services. The services to be provided by Calpine are covered in the "Addendum for Data Management Services" included as part of the MPSA. The DM Services to be provided would include start-up support services (including coordination with SDG&E), electronic data exchange with SDG&E, maintaining a customer information system database, providing a customer call center, billing administration, Settlement Quality Meter Data (SQMD) services, Qualified Reporting Entity (QRE) services, and other required reporting services. Calpine would also assist the CCA, as needed, in compiling various customer sales and usage statistics that may be necessary to facilitate the CCA's completion of required external reporting activities. Such statistics will likely include annual retail sales statistics for CCA customers, including year-end customer counts and retail electricity sales (expressed in kilowatt hours) for each retail service option offered by the CCA.

The initial term of the MPSA would be for five (5) years and would be extended automatically for successive two-year terms thereafter.

Calpine Compensation

Pursuant to the proposed contract, if the CCA launches, Calpine would be paid a monthly fee of \$1.35 for each customer meter enrolled in the CCA. Given that there are approximately 7,800 customers in Solana Beach, this would equate to approximately \$10,530 per month. Beginning on the first month of the first term extension, the service fee would escalate annually at the Consumer Price Index for the San Diego region.

CEQA COMPLIANCE STATEMENT:

Not a project as defined by CEQA

FISCAL IMPACT:

As mentioned previously, if the Council approves and authorizes the City to enter into the contracts for additional evaluation and development of the CCA, all actions and associated costs in Phase 1 will be borne by the consultant team. Thereafter, if the Council elects to proceed with the CCA, costs will then be incurred but would be paid for

by the CCA. Additionally, the City has incurred Staff costs as well as consultant services costs to provide assistance to the City in the review of proposals and negotiation of the proposed contracts to ensure the CCA is structured in a manner that protects the City's General Fund while providing the necessary legal protections as directed by the Council.

WORK PLAN:

Environmental Sustainability – “Policy Development” – Priority Item 2) Develop and Implement a Community Choice Aggregation (CCA) Program

OPTIONS:

- Approve Staff recommendation and authorize the City Manager to execute the two consultant contracts with TEA and Calpine.
- Do not approve Staff recommendation.
- Provide further direction to Staff.

DEPARTMENT RECOMMENDATION:

Staff recommends the City Council adopt Resolution 2017-043 and Resolution 2017-044 authorizing the City Manager to execute all contracts with TEA and Calpine to provide CCA services to the City.

CITY MANAGER RECOMMENDATION:

Approve Department Recommendation



Gregory Wade, City Manager

Attachments:

1. Resolution 2017-043 – CCA contract with TEA
2. Resolution 2017-044 – CCA contract with Calpine
3. EES Peer Review of Community Choice Aggregation Study
4. TEA Resource Management Agreement and Task Orders 1 & 2
5. Calpine Master Professional Services Agreement and Addendum

RESOLUTION NO. 2017-043

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, TO AUTHORIZE THE CITY TO ENTER INTO A CONTRACT WITH THE ENERGY AUTHORITY TO DEVELOP AND ADMINISTER THE CITY'S COMMUNITY CHOICE AGGREGATION PROGRAM

WHEREAS, Community Choice Aggregation, or CCA, is a program available within the service areas of investor-owned utilities, such as San Diego Gas & Electric (SDG&E), which allows cities and counties to purchase and/or generate electricity for their residents and businesses; and

WHEREAS, CCA is a mechanism by which local governments assume responsibility for providing electrical power for residential and commercial customers in their jurisdiction in partnership with SDG&E; and

WHEREAS, the City Council has been supportive of the research and possible development of a viable CCA program since 2011; and

WHEREAS, the City Council directed Staff to prepare and release a request for proposals to seek comprehensive consultant services to further assess, finance, develop, implement and operate a CCA on behalf of the City; and

WHEREAS, on November 16, 2016, the City Council authorized and directed the City Manager to negotiate a professional services agreement with The Energy Authority (TEA) and Calpine (formerly Noble Energy Services) to develop, finance, implement and manage a local CCA program; and

WHEREAS, Staff and TEA have completed negotiations on the Resource Management Agreement and Task Orders 1 and 2 to initiate the development and administration of the City's CCA program.

NOW THEREFORE BE IT RESOLVED by the City Council of Solana Beach that:

1. That the foregoing recitations are true and correct.
2. The City Council authorizes the execution of the TEA Resource Management Agreement and Task Orders 1 and 2 to initiate the development and administration of the City's CCA program.
3. The City Manager is authorized to execute all needed documents to effectuate the agreement with TEA for the City's CCA program.

PASSED AND ADOPTED this 24th day of May, 2017, at a regularly scheduled meeting of the City Council of the City of Solana Beach, California by the following:

AYES: Councilmembers –
NOES: Councilmembers –
ABSENT: Councilmembers –
ABSTAIN: Councilmembers –

MIKE NICHOLS, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA N. CANLAS, City Attorney

ANGELA IVEY, City Clerk

RESOLUTION NO. 2017-044

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLANA BEACH, CALIFORNIA, TO AUTHORIZE THE CITY TO ENTER INTO A CONTRACT WITH CALPINE TO ADMINISTER THE DATA MANAGEMENT SERVICES FOR THE CITY'S COMMUNITY CHOICE AGGREGATION PROGRAM

WHEREAS, Community Choice Aggregation, or CCA, is a program available within the service areas of investor-owned utilities, such as San Diego Gas & Electric (SDG&E), which allows cities and counties to purchase and/or generate electricity for their residents and businesses; and

WHEREAS, CCA is a mechanism by which local governments assume responsibility for providing electrical power for residential and commercial customers in their jurisdiction in partnership with SDG&E; and

WHEREAS, the City Council has been supportive of the research and possible development of a viable CCA program since 2011; and

WHEREAS, the City Council directed Staff to prepare and release a request for proposals to seek comprehensive consultant services to further assess, finance, develop, implement and operate a CCA on behalf of the City; and

WHEREAS, on November 16, 2016, the City Council authorized and directed the City Manager to negotiate a professional services agreement with The Energy Authority (TEA) and Calpine (formerly Noble Energy Services) to develop, finance, implement and manage a local CCA program; and

WHEREAS, Staff and Calpine have completed negotiations on the Master Professional Services Agreement and Addendum to enable Calpine to implement the Data Management Services for the City's CCA program.

NOW THEREFORE BE IT RESOLVED by the City Council of Solana Beach that:

1. That the foregoing recitations are true and correct.
2. The City Council authorizes the execution of the Calpine Master Professional Services Agreement and Addendum to implement the Data Management Services for the City's CCA program.
3. The City Manager is authorized to execute all needed documents to effectuate the agreement with Calpine for the City's CCA program.

PASSED AND ADOPTED this 24th day of May, 2017, at a regularly scheduled meeting of the City Council of the City of Solana Beach, California by the following:

AYES: Councilmembers –
NOES: Councilmembers –
ABSENT: Councilmembers –
ABSTAIN: Councilmembers –

MIKE NICHOLS, Mayor

APPROVED AS TO FORM:

ATTEST:

JOHANNA N. CANLAS, City Attorney

ANGELA IVEY, City Clerk

City of Solana Beach

**City of Solana Beach
Peer Review of Community Choice Aggregation Study
DRAFT
March 8, 2017**

Prepared by:



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ATTACHMENT 3



March 8, 2017

Mr. Greg Wade
Mr. Dan King
City of Solana Beach
635 S. Highway 101
Solana Beach, CA 92075

SUBJECT: Peer Review of City's Customer Choice Aggregation Study

Gentlemen:

Please find enclosed EES Consulting, Inc.'s (EES) peer review of the City of Solana Beach's (City) Community Choice Aggregation (CCA) Technical Analysis dated April 22, 2016.

EES appreciates this opportunity to assist the City in its evaluation of the CCA options. Please feel free to contact us if we may be of further assistance on this interesting option.

Very truly yours,

Gary Saleba
President

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Executive Summary

Introduction

EES Consulting, Inc. (EES) was retained by the City of Solana Beach (the City) to provide a peer review of the Community Choice Aggregation Technical Analysis (CCA Study) dated April 22, 2016. EES is well qualified to provide this peer review based on our extensive work over the past 40 years in the areas of power supply planning and procurement, rates and regulatory analysis, utility formation and merger studies, and more recently with emerging CCA programs in California. EES is currently doing the technical consulting for CCAs in San Bernardino, Riverside, Los Angeles, Alameda and Butte Counties and the City of San Jose.

Our review of the City's CCA Study is focused on examining four factors, which include the following:

1. Whether all of the necessary steps of forming a CCA have been considered;
2. Whether the technical analysis of load data, rate projections, cost comparisons and economic impacts appear to be done correctly;
3. Whether power supply alternatives are appropriate; and
4. Whether environmental and economic development considerations have been adequately considered.

The CCA Study provided a good background on the history and issues regarding the formation of CCAs. However, the CCA Study economic analysis was fairly generic and is almost a year old. Given that the CCA Study was provided very early in the consideration of a CCA, the level of analysis is appropriate.

Below each key component of the CCA study will be critiqued. This critique will be followed by the EES recommendation of how to proceed.

Load Forecast and Power Supply Costs

The CCA Study provided a reasonable estimate of CCA loads using data provided by SDG&E as well as growth rates provided by the California Energy Commission (CEC). The approach used is consistent with other CCAs and appropriate at this stage of analysis.

In terms of power supply costs, the CCA Study used the forward price projections for the Southern California region as provided by the SP Forward Curve Prices from Bloomberg (1-21-16). The CCA Study analysis then added a \$25 per MWh adder for renewable projects. While this is a reasonable approach at this stage of evaluation, it is rather generic. The resulting rate is \$32.25 for market power and \$57.25 for renewable power in 2017.

Prices for renewables used in the CCA Study appear to be based on prices seen in other states as published in 2015. Based on EES's more recent analysis for other southern California CCA projects, we found that municipal utilities in California have purchased output from large-scale solar projects for a range of \$37 to \$40 per MWh. We have seen wind projects in the range of \$50 per MWh. Therefore, EES believes the \$57.25 used for full renewable projects (using a \$25 per MWh premium) is too high for renewable projects. In addition, we do not believe the price for renewables will have escalation factors as high as for regular market prices. For the most part, the other fees in the CCA Study related to power costs appear reasonable.

Additionally, the City may wish to consider initially, a stepped power supply procurement approach where power contracts of different terms are obtained. After this initial start-up period, power contracts with longer terms should be considered and meet State power procurement requirements.

EES recommends that the renewable and market prices used for the CCA Study be updated to reflect more recent pricing experience.

CCA Costs and Rate Comparisons

While power supply costs are the biggest factor in total CCA costs, it is necessary to include all other costs associated with the CCA and compare the total to the continued costs of bundled service from SDG&E. The CCA Study makes that comparison for a five-year period. EES believes that the City needs to look beyond 5 years.

EES recommends that the economic analysis be updated to include a 10-year period.

In the CCA Study, it was assumed that the administration of the CCA would be outsourced for a charge of \$5.75 per MWh. In the EES review of existing CCAs, we found that the administrative costs ranged from roughly \$3 to \$7 per MWh. For our own CCA Business Plans, we estimated administrative costs to be in the range of \$3 to \$4 per MWh. Note that these cases reflect the inclusion of metering and billing charges. It is difficult to provide an accurate comparison as we do not always know if all of the same costs in each case are included, and there is a wide range in the size of the existing and proposed CCA organizations. It appears that the rate of \$5.75 per MWh plus another \$3.00 per MWh for meter and billing charges appears to be on the high side when compared to larger CCA groups currently in the formation process. We note, however, that a CCA for the City on a stand-alone basis would require outsourcing of the administrative function due to its small size. The administration proposed would need to include a premium for the risk that would be taken by the provider. Given these circumstances, we believe the assumed rates for CCA administration are appropriate.

The CCA Study assumes a 2.5% escalation in SDG&E bundled rates. This is a rather simplistic assumption and a more detailed analysis needs to be considered in forecasting the separate delivery and power supply charges from SDG&E when the City updates the CCA Study.

A key factor in the analysis is the PCIA that is added by SDG&E to all CCA bills to recover the lost net revenues associated with departing CCA loads. The PCIA used in the CCA Study is the actual 2016 number, which was appropriate at the time of the CCA Study. It does not appear that the CCA Study incorporated increases in the PCIA rate. For 2017, the PCIA estimate increased by 61% to 84% and is likely to increase further. This is an issue to the CCA.

EES recommends that an updated analysis include more recent PCIA estimates for 2017 and beyond.

Based on the CCA Study, savings associated with a CCA for the City are expected to result in savings of 3 percent for customers plus an additional \$6.8 million in retained revenue over the initial 5 years for the CCA in the baseline case. In the highest renewable scenario, the savings to customers would be 1% and the retained revenue for the CCA would be \$2.3 million.

Based on the review of the assumptions in the CCA Study, EES makes the following observations:

- The cost of renewables and the escalation rate appear to be too high
- The PCIA levels are expected to be higher in 2017 than forecast in the CCA study and beyond
- The SDG&E rate forecast is too simplistic

Because these key factors could impact the final results of the CCA Study, EES recommends that the economic analysis be updated to reflect more recent and in-depth projections of these factors and that the analysis be extended to a 10-year period. This financial update should occur before the City's governing body's formal consideration of forming the CCA.

Finally, the CCA Study provided a limited sensitivity analysis of risks associated with forming a CCA. EES recommends that when the economic analysis is updated, it should include a sensitivity or risk analysis. This analysis would include sensitivities associated with different levels of the PCIA, the level of rates for SDG&E, the regulatory issues related to CCAs, the availability and price of renewable resources, and the issues for a CCA related to financing or credit.

Macroeconomics and Environmental Impacts

The CCA Study discussed macroeconomic benefits associated with the retained revenue for the CCA, which is appropriate. It did not discuss the added benefits associated with the 3% rate reduction to customers that would provide disposable funds that could be spent on other goods and services in the region.

Carbon reductions were estimated for each of the scenarios provided in the CCA Study. Given our experience, the greenhouse gas (GHG) savings appear to be too high. On the other hand, the CCA Study has not quantified any environmental benefits associated with the retained revenues that may be spent on energy efficiency or distributed energy resources. Because these two factors have offsetting impacts, we would expect to see overall environmental benefits associated with a CCA in keeping with the CCA Study's initial findings.

Conclusions

EES concludes that the CCA Study provided a reasonable, yet generic, approach to looking at the feasibility of forming and operating a CCA for the City. The assumptions related to the load forecast, participation rates and operating costs appear to be in the appropriate range. The cost of renewable power appears to be too high while the forecast PCIA level appears to be too low. These two variables tend to counter-balance each other. As such, the initial findings in the CCA Study are likely sufficiently accurate for the City to proceed with the next step of forming a CCA.

In the next step of CCA development, EES suggests the City update and refine as noted below:

- Narrow and prioritize the objectives of the CCAs to include:
 - Maximize the savings to customers
 - Deliver local renewable energy development and energy efficiency programs at or above current budget levels
 - Reduce GHG emissions
- Ensure City is protected from financial risk at lowest cost
 - The City is planning on minimizing risks by outsourcing major tasks and requiring vendors to provide financing.
 - As the City proceeds with the CCA, it will be important to maintain their competitive advantage by pursuing overhead and administrative costs.
- Determine the level of internal vs. external staffing support
 - Most operating CCAs have started with minimal internal staffing with the remainder of the requirements supported by consultants at early operations, and then transition to additional in-house staff while retaining some consultant support.
 - The City will have to decide when (or if) it will assume operation of the CCA with increasing internal staff.

Overall, the CCA Study provided an adequate level of analysis for decision-making given the early stage of consideration by the City. In the opinion of EES, the CCA Study is a good basis for making policy decisions about proceeding with a CCA for the City. Should the City decide to pursue the formation of a CCA, the aforementioned updates to the financial proformas should be undertaken.

Introduction and Overview

Introduction

EES Consulting, Inc. (EES) was retained by the City of Solana Beach (the City) to provide a peer review of the Community Choice Aggregation Technical Analysis (CCA Study) dated April 22, 2016. EES is well qualified to provide this peer review based on our extensive work over the past 40 years in the areas of electric utility power supply planning and procurement, rates and regulatory analysis, utility formation and merger studies, and more recently with emerging CCA programs in California. EES is a registered professional engineering and management consulting firm that has been serving the utility industry since 1978. We currently have over 500 utility clients all across North America with our primary focus within the WECC reliability area. We are currently doing the CCA Business Plans for the County of Los Angeles, San Bernardino Associated Governments, Coachella Valley Association of Governments, West Riverside Council of Governments, the City of San Jose, the County of Butte and the County of Alameda. We also performed a similar peer review for Alameda County's East Bay Clean Energy. As such, we are well-versed in utility operations globally and CCA-related issues in California.

Scope of Services for EES

Our review of the City's CCA Study is focused on examining whether all of the necessary steps of forming a CCA have been considered, whether the technical analysis of load data, rate projections, cost comparisons and economic impacts appear to be done correctly, whether power supply alternatives are appropriate, and whether environmental and economic development considerations have been adequately considered. The EES analysis did not duplicate the technical analysis performed to ensure accuracy but it did include a critique of the analysis provided in the CCA Study and accompanying Technical Appendices. Note that the EES review included the CCA Study, the Study's Appendices, and the spreadsheet analysis provided in conjunction with the CCA analysis.

Conflict of Interest

EES has no professional relationship with the author of the CCA Study or any party of interest. Our opinions expressed below are independent, and based upon EES's past and present work for California CCAs and our knowledge of the electric utility industry in California. EES has also not done any prior work for the City or its employees.

Background on CCAs

The CCA Study provided a good background of the history and issues regarding the formation of CCAs. Since the CCA Study was provided in April of 2016, additional CCAs have become

operational, including CleanPowerSF (serving the City and County of San Francisco) and Peninsula Clean Energy (serving San Mateo County). Other local municipalities and Counties nearby the City are looking at CCAs, including the City of San Diego, San Diego County, and the City of Encinitas. Many Cities and Counties in the SCE and PG&E service areas are also at various points of CCA exploration and formation.

Policy Issues

The CCA Study talked about options for using electric bill savings from the CCA and provides a good discussion of options. However, in our experience it is important to establish the City goals at the onset so that the CCA programs can be structured appropriately. Given the preliminary nature of the CCA Study, this level of policy discussion is appropriate. Going forward, the City will need to develop clear objectives related to forming a CCA. Lower rates for customers, lower GHG emissions and greater economic development in the City are all potential benefits of a CCA. It is not clear if these three benefits are all equally important to the City or if one is the primary objective. By making the objectives clearer upfront, it is possible to better tailor the alternatives to meet the objectives of the City. This will be important in making decisions if the City decides to proceed with a CCA.

The following are some of the policy issues that need to be considered or addressed if the City proceeds with a CCA:

- Narrow the objectives of the resource portfolio
 - Maximize the savings to customers
 - Deliver local renewable energy development and energy-efficiency programs at or above current budget levels
 - Reduce GHG emissions
- Determine the split between savings passed on to customers through lower rates and revenues retained by the City for local projects
- Ensure City is protected from financial risk at lowest cost

Summary of EES Review

In summary, the EES peer review shows that the City has done a good job of looking at the CCA options and EES agrees that the results of the CCA Study can be relied upon in making a choice on whether or not to proceed with the formation of a CCA. We do, however, have some specific areas where we recommend the CCA financial analysis be updated to reflect more recent estimates, particularly related to the SDG&E retail rates, renewable and market prices, and the SDG&E PCIA. This analysis will help to confirm the results of the CCA Study and provide some additional risk analysis for the City to consider. The following sections provide EES's detailed comments related to the various sections of the CCA Study.

Load Forecast and Power Supply Costs

Load Forecast

One of the first steps in evaluating a CCA is the forecast of the electric loads for the City. The CCA Study prepared the load forecast using load data provided by SDG&E by rate class. While EES did not review the actual data provided by SDG&E, the approach used in the CCA Study is appropriate and consistent with studies completed by other jurisdictions. The City loads were forecast to increase at a rate of 1.3 percent per year, which is based on the CEC forecast for the southern California region.

Two items related to the load forecast that require some caution are in the areas of load shape and load growth. Because the City loads are unusually weighted to residential and smaller commercial loads, the power costs may tend to be higher than for some of the larger, more diverse communities forming CCAs. This is due to the fact that the load shape for smaller customers is more differentiated within a day and on a seasonal basis. The other issue with the City's load forecast is the growth rate, which is higher than for some of the other jurisdictions in southern California. Using a percent growth rate is appropriate for a 5-year period. When a longer study period is considered, the City should be cautious in using a consistent percent growth rate as it would lead to unwarranted exponential growth.

Based on the loads, the next step is to determine the participation rate for the CCA. The CCA Study assumes an 80 percent participation rate. While this is an acceptable level for analysis, it should be noted that participation rates for the operating CCAs range from 86 percent for Marin Clean Energy to 95 percent. The average level is 90 percent. Based on this information, the 80 percent assumption contained in the CCA Study is on the conservative side.

Power Supply Costs

Given the amount of load to be served by the CCA, the next step is to forecast the power supply costs for the CCA. The CCA Study uses the forward price projections for the southern California region as provided by the SP Forward Curve Prices from Bloomberg (1-21-16). Bloomberg then adds a \$25 per MWh adder for renewable projects. While this is a reasonable approach at this stage of evaluation, it is rather generic. The resulting rates are \$32.25 for market power and \$57.25 for renewable power in 2017. Another \$14 is added to cover load shaping, resource adequacy and other fees. For the baseline case with renewable power costs are \$54.50 per MWh in 2017.

Prices for renewables used in the CCA Study appear to be based on prices seen in other States as published in 2015. Based on EES's more recent work with other California CCA projects, we found that municipal utilities in California have purchased the output from utility scale solar projects for a range of \$37 to \$40 per MWh. We have seen wind projects in the range of \$50

per MWh. Therefore, the \$57.25 used for full renewable projects (using a \$25 per MWh premium) is too high for large-scale renewable projects.

In addition, for the CCA Study the trend in renewable pricing follows the upward trend in market prices. In the EES analysis of other California CCAs, we have found that the price for renewables will remain static in nominal terms to balance the influence of two trends. First, renewable energy capital prices are being driven down by the rapidly declining cost of solar projects. This trend has persisted over the past five years and is expected to continue in the future. However, this trend could be balanced out, in part, by the impact of increasing Statewide demand for renewables as a result of California's Renewable Portfolio Standard (RPS) laws and the potential loss of the investment tax credit (ITC) currently enjoyed by renewable project developers.

Based on what we have seen, the CCA Study assumptions are conservative. EES recommends that the feasibility analysis be updated to reflect both a lower renewable price and a lower escalation factor. A range of prices could be included in further sensitivity analysis associated with the suggested update. While the other power supply fees used in the CCA Study appear reasonable, they have used a cost of \$3 per MWh for the Scheduling Coordinator. Based on EES's experience, this cost is closer to the range of \$1 to \$2 per MWh. However, given the small size of the City, the higher number might be appropriate as there are fixed costs associated with acquiring this service and there may be added risk for the Scheduling Coordinator.

Portfolios

The CCA Study considers three different portfolios with various amounts of renewable resources ranging from SDG&E's RPS requirements to a 100% renewable portfolio. This approach is appropriate at this stage of analysis. Going forward, the City should further refine its goals and objectives to narrow down the amount of renewable resources that are desirable. In many cases, CCAs plan to offer one product that is at or slightly above the incumbent utility's RPS requirements and another product that is 100 percent renewable, with customers having the ability to choose between the two options or "opt-up". The type of portfolio to pursue and whether customers are given more than one option will need to be considered further by the Governing Board if the City proceeds with the formation of a CCA. These decisions would need to be made prior to or at the time the CCA has actual power supply offers to evaluate.

One point made in the CCA Study is that the greater savings associated with a smaller renewable portfolio allows the City to actually enhance the GHG and other benefits by having greater funds to apply towards local renewables and energy efficiency projects. We agree that this is a factor to consider in selecting the appropriate portfolio.

CCA Costs and Comparison to SDG&E Rates

While power supply costs are the biggest factor in total CCA costs, it is necessary to include all other costs associated with the CCA and compare the total to the costs of bundled service from SDG&E. The CCA Study makes that comparison for a five-year period. While a five-year period has greater certainty than a longer time period, it is necessary to look at a longer time frame to determine the full impact of establishing a CCA. EES recommends that the financial feasibility analysis be updated to include a 10-year time period.

In developing costs for the CCA, the CCA Study included the cost of CCA power, the CCA management cost, the SDG&E transmission and distribution charges, the SDG&E meter and billing fees and the SDG&E PCIA charges. These costs were then compared to the bundled SDG&E rates to determine the potential savings or costs associated with a CCA. This is an appropriate approach. Going forward, the City will also need to consider how it wants to use those savings (i.e., whether to further decrease rates for customers, promote energy efficiency for customers, or pay a higher cost to include local renewable projects).

CCA Administration Costs

In the CCA Study, it was assumed that the administration of the CCA will be outsourced to an administrator for a charge of \$5.75 per MWh. This reflects annual costs of about \$370,000 per year. The CCA Study is not entirely explicit about what is included for this charge but it is the only added charge to power costs and SDG&E charges. Therefore, EES assumes that it includes start-up costs, the cost of day-to-day administration, managing contracts, customer outreach, power resource planning, accounting, customer service, key account representation, regulatory compliance, regulatory intervention in SDG&E charges, budgeting, rate-setting and data management coordination with SDG&E. If any of these functions are not included in the fixed administration charge, then there would be additional costs to the CCA. Note that the CCA Study also includes an additional \$3 per MWh for meter and billing fees from SDG&E.

In our review of existing CCAs, EES found that the administrative costs ranged from roughly \$3 to \$7 per MWh. For the EES CCA evaluations performed over the past year, we estimated administrative costs to be in the range of \$3 to \$4 per MWh. Note that in both cases, these ranges reflect the inclusion of the incumbent utility's metering and billing charges. It appears that the rate of \$5.75 per MWh plus another \$3.00 per MWh for meter and billing charges is on the high side when compared to larger CCA groups currently in the formation process. We note, however, that given the size of the City CCA on a stand-alone basis requires outsourcing of the administrative function, which would include a premium for the risk that will be taken by the provider.

One issue not specifically discussed in the CCA Study is cash flow and working capital. There is a lag between the payments associated with paying operating expenses and the revenue associated with customer billing. EES generally expects a 60-day lag in payments. The City must have funds available to provide for this needed working capital on a regular basis. Given that bundled charges at SDG&E rates are nearly \$1 million per month, this could be a significant cost to the City. The City has indicated that this will be a requirement from the key consultants.

SDG&E Delivery and PCIA Rates

The CCA Study applied a 2.5% escalation of SDG&E bundled rates. While the spreadsheet provides the SDG&E rates split between the distribution and power supply components for 2016, the spreadsheet does not show the cost comparison for later years so it is unclear how the 2.5% increase was applied. We assumed it was applied equally to both components.

EES recommends that the economic analysis be updated to include a more thorough analysis of SDG&E power supply and PCIA rates. This would include looking at their public financial statements, integrated resource plans, load forecasts and rate filings. With that information, rates can be forecasted separately for the power supply and delivery rate components.

For the delivery charges from SDG&E, the charges will apply to both a CCA and SDG&E's bundled service. Escalation in these rates may be higher than for power supply as energy efficiency and distributed energy resources (i.e., customer-owned solar panels) reduce the sales per customer. The impact will be the same with or without a CCA.

For power costs, it is necessary to look at the utility's resource mix, integrated resource planning in the future, and the impact of RPS requirements on the utility. Market prices for power will have an impact on the power costs to the extent there are market transactions included in the resource mix. The power cost is also linked to the PCIA amounts charged by SDG&E.

According to the official 2015 power label report, SDG&E had 35% renewable, 54% natural gas and 11% market resources. While SDG&E is not actively seeking additional resources, the IOU may have to invest in storage and renewable resources based on CPUC direction. SDG&E's power supply costs consist of costs associated with SDG&E owned resources, generating resources under contract, contracts to meet Resource Adequacy requirements, renewable resource contracts and costs associated with SONGS. The variable costs of these resources are tracked and recorded in the Energy Resource Recovery Account ("ERRA").

In the annual ERRA filing, SDG&E also calculates the PCIA for Direct Access Customers and CCA customers. The PCIA is highly dependent on the assumed market benchmark used in the calculation as well as the assumption about departing load. SDG&E does not have CCA customers at this time, therefore, it is likely that the current PCIA estimate does not include any lost CCA loads. SDG&E has estimated the 2017 PCIA, but it will be updated later in 2017. If any

of the CCAs that have provided their Notice of Intent (NOI) before that time, that should act to impact the PCIA calculations.

For both the PCIA set for 2016 and estimated for 2017, the PCIA continues to increase for later vintages. For example, the PCIA set for the 2015 vintage is lower than the PCIA set for the 2016 vintage. Similarly, the estimated 2017 PCIA is higher than the 2016 vintage. This may be an impact of new resources, implying that SDG&E is continuing to add more expensive contracts to their resource portfolio, or it may be due to the impact of estimated departing load or low market prices.

Comparing the PCIA for 2016 with the estimated PCIA for 2017 shows a significant increase. Table 1 provides this comparison:

Customer Class	2016 PCIA	Estimated 2017 PCIA	% Increase
Residential	0.01278	0.02347	84%
Small Commercial	0.01451	0.02438	68%
Med. And Large Commercial	0.01114	0.01983	78%
Agriculture	0.00819	0.01322	61%
Lighting	0	0	0%

In addition, it is important to note that the 2017 PCIA includes almost \$75 million in an insurance settlement discount which results in a reduction in the overall PCIA level. The loss of this settlement discount in subsequent years should be considered when evaluating the future level of the PCIA. This settlement was received by SDG&E in conjunction with a one-time insurance settlement associated with the SONGS nuclear plant closure.

The CCA Study used 2016 PCIA charges from SDG&E and those charges are applied to the CCA. This was appropriate as no 2017 PCIA was available at the time of the CCA Study. The estimated 2017 PCIA will be updated later in 2017. There is no specific discussion of trends in the PCIA in the CCA Study and so we assume the CCA Study does not include an increase in the PCIA charges. Based on EES's experience, we expect these charges to increase significantly in the short-term due to reduction in power supply market prices and the ultimate loss of the settlement discount, then decrease as the higher priced contracts expire and market prices increase.

We recommend that the economic analysis be updated to reflect more recent PCIA levels as well as expectations for the 2nd half of 2017 rate increase and beyond.

Results of Cost Comparisons

Based on the CCA Study, savings associated with a CCA for the City are expected to result in savings of 3 percent for customers plus an additional \$6.8 million in retained revenue over 5

years for the CCA in the baseline case. In the highest renewable scenario, the savings to customers would be 1 percent and the retained revenue for the CCA would be \$2.3 million.

Based on the review of the assumptions in the CCA Study, we make the following observations:

- The cost of renewables and their escalation rates appear to be too high
- Estimated PCIA levels will be higher in 2017 and beyond
- The SDG&E rate forecast is too simplistic

We recommend that these assumptions be updated in a subsequent study. However, on balance, the results of the CCA Study are accurate enough to make policy decisions on whether or not the City should pursue the CCA option further.

Sensitivity Analysis

The CCA Study provided a limited sensitivity analysis of risks associated with forming a CCA. In future analysis, we would suggest that a greater analysis of risk be included.

The first risk mentioned is the participation rate. We do not see this as a great risk given the participation rate of existing CCAs and the conservative estimate contained in the CCA Study.

The second risk is the risk associated with energy price variability. This is a great risk for a CCA but it is also a risk for SDG&E. Higher market and renewable prices will increase costs for both the CCA and SDG&E. But at the same time it would lower the PCIA rate because SDG&E would be able to sell surplus power at a higher rate.

In summary, an updated financial analysis should include:

- *PCIA* – The uncertainty related to the PCIA should be analyzed in detail. The biggest uncertainty is related to the initial PCIA level and the subsequent growth rate. Based on the experience seen in other IOU service areas, the PCIA can jump up to 300% from year to year based on market benchmarks and the level of departing loads.
- *Retail Rate Forecasts* – The CCA Study should include retail rate uncertainty for SDG&E over the study period. This should consider SDG&E’s portfolio costs compared to changes in the market and renewable prices. Because SDG&E has existing resources, the impacts of changes in the market may affect SDG&E’s rates differently than the CCA’s rates.
- *Regulatory Risks* – Unforeseen changes in legislation (California Public Utility Commission, State legislation and Federal legislation) may impact the results of the CCA Study. The CCA Study should provide a discussion of the potential regulatory risks and the impact on SDG&E rates as well as the potential impacts on the CCA.

- *Administrative Cost* – Because the City is planning to outsource administrative and financing costs, a sensitivity should be modeled to determine the sensitivity of CCA feasibility to these overhead costs.

Macroeconomic and Environmental Factors

The CCA Study estimates that 17 to 20 jobs would be created for every \$1 million spent locally. This is roughly the annual retained revenues that could be spent on local energy efficiency or distributed energy resources. This is a very simplistic estimate but is reasonable at this stage in the CCA analysis.

Another source for potential macroeconomic benefits is the savings passed on to customers. The 3 percent rate reduction to customers assumed in the CCA Study would provide more disposable income that could be spent on other goods and services in the region.

Carbon reductions were estimated for each of the scenarios provided in the CCA Study and numbers reflect the additional savings beyond the SDG&E renewable portfolio requirements. The assumed carbon savings on a per GWh basis is not explicitly stated but appears to be in the range of 850 tons per GWh. In our experience, the savings are reported to be in the range of 400 to 700 tons per GWh. Therefore, the initial estimate of GHG savings may be too high. On the other hand, the CCA Study has not quantified any environmental benefits associated with the retained revenues that may be spent on energy efficiency or distributed energy resources.

We also agree with the CCA Study's statement that the scenarios with lower renewable percentages may achieve higher environmental benefits overall if energy efficiency and distributed energy resources are accounted for.

Conclusions

EES concludes that the CCA Study provided a reasonable approach to looking at the feasibility of forming and operating a CCA for the City. The CCA Study's assumptions related to the load forecast, participation rates and operating costs appear to be in the appropriate or conservative range. However, the cost of renewable power appears to be too high while the PCIA level appears to be too low.

The CCA Study adequately looked at different portfolios, however, the City will likely need to fine-tune its goals and objectives in order to narrow down the range of options to consider if it moves forward. The CCA Study examined some of the risks of CCA formation but does not provide analysis on other key risk factors.

Overall, the CCA Study provided an adequate level of analysis given the early stage of consideration by the City. In the opinion of EES, the CCA Study is a good basis for making policy decisions about further consideration of a CCA for the City. However, because the CCA Study is nearly a year old and some changes have occurred with renewable costs and the PCIA, we recommend the economic analysis be updated to confirm results at some point in the future before finalizing the CCA formation question. Furthermore, additional sensitivity analysis will provide more information to the City about the potential risks of forming a CCA. We understand that the City is already embarking on this economic update which is appropriate and timely.

**RESOURCE MANAGEMENT AGREEMENT
BETWEEN
THE ENERGY AUTHORITY, INC.
AND
THE CITY OF SOLANA BEACH
d/b/a SOLANA BEACH CCA**

*** Subject to approval of TEA Boards of Directors and the City of Solana Beach d/b/a
Solana Beach CCA*

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EXHIBITS, SCHEDULES, and ATTACHMENTS:

Task Order 1 – for Phase I and Phase II Core Services.

Task Order 2 – for Phase III Core Services.

This RESOURCE MANAGEMENT AGREEMENT (this "Agreement"), dated this ____ day of _____, 2017, is made and entered into by and between THE ENERGY AUTHORITY, INC., ("TEA"), a Georgia non-profit corporation and The City of Solana Beach, d/b/a Solana Beach CCA, including its successors and assigns ("SBCCA" or the "CCA"). TEA and CCA are sometimes referred to herein individually as a "Party," or collectively as the "Parties."

Recitals

WHEREAS, CCA seeks to develop, finance, implement, and operate a Community Choice Aggregation program for its residents (the "Purpose"); and

WHEREAS, CCA is seeking TEA's assistance in providing certain core services, as more particularly described herein (the "Services"), related to the Purpose; and

WHEREAS, TEA is qualified and has been selected by CCA to provide such Services, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby mutually agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct.
2. **Scope of Work.**
 - 2.1 **Task Orders.** Pursuant to the provisions of this Agreement, TEA shall provide the Services to CCA as described in one or more task orders (each a "Task Order") to be executed by the Parties and attached hereto. Each Task Order by this reference is incorporated as part of this Agreement. The services provided pursuant to such Task Orders shall be outlined and described in an individual "Scope of Services." The first of such Task Orders is attached hereto and incorporated herein as "Task Order 1."
 - 2.2 **Phases of Work.** The Scope of Services may be divided in three or more separate phases (and sub-phases) with designated services and time periods (each a "Phase"), and proceed in chronological order, as appropriate. Accordingly, Task Order 1 will coincide with the services which are anticipated to be provided by TEA during Phase I (referred to as "Program Development") and Phase II (referred to as "Program Launch").
 - 2.3 **Subcontractors or Sub-consultants.** For any individual phase, the Parties agree that the services contemplated under this Agreement, may be provided by a subcontractor or sub-consultant of TEA, which services may be described in an individual TEA Task Order. However, for the convenience of the Parties, services not covered by this Agreement or an individual Task Order may be provided through a direct agreement between CCA and the appropriate third party.

3. **Term and Effective Date.**

3.1 This Agreement shall become effective on the date written in the first paragraph of this Agreement (the "Effective Date") and shall remain in effect for a period of five (5) years (the "Initial Term") from the Effective Date, unless terminated as allowable in the Events of Termination Section herein. At the end of the Initial Term, the Agreement shall renew on an annual basis for successive One (1) year terms (each, a "Renewal Term"), unless otherwise agreed to by the Parties or terminated pursuant to the Events of Termination Section. Notwithstanding the aforementioned date, the commencement of services under this Agreement shall not occur prior to the date this Agreement is executed by both Parties.

3.2 Task Order I shall be executed by the Parties and become effective on the same Effective Date as this Agreement. The provision of Services pursuant to any additional Task Order shall commence, and terminate, as provided in each respective Task Order.

4. **Events of Termination.**

4.1 By SBCCA. After the commencement of Phase I and before the start of Phase II ("Program Launch"), SBCCA may terminate this Agreement, with or without cause, and without financial liability or payment of any kind, by providing TEA with advance written notice, as follows:

4.1.1 Delivery of notice to TEA within forty-five (45) business days after TEA's completion and delivery to SBCCA of TEA's Phase I Assessment (the "Termination Window").

Notwithstanding the foregoing, if SBCCA provides notice of termination after the Termination Window, SBCCA shall pay to TEA, TEA's charges, determined by multiplying TEA's 2017 hourly billing rate by the time TEA's staff incurred in the provision of Services during Phase I.

By TEA. After the commencement of Phase I and before the start of Phase II, TEA may terminate this Agreement due to an Event of Default (as defined herein) which is not remedied by SBCCA, as provided in Section 25 ("Default") of this Agreement.

4.2 By SBCCA. During the period of time spanning the commencement of Phase II and before the designated start of Phase III, SBCCA may terminate this Agreement, with or without cause, by providing TEA advance written notice, only if the all of following conditions are met by SBCCA:

4.2.1 Delivery of notice to TEA is given at least forty-five (45) days before the Phase III Commencement Date; and

4.2.2 TEA has not executed any agreement or incurred any obligation to procure power, or committed to other financial obligations on behalf of SBCCA.

If SBCCA provides notice of termination to TEA in compliance with Sections 4.2, then SBCCA shall pay to TEA the lesser of (i) TEA's charges, determined by multiplying TEA's 2017 hourly billing rate by the time TEA's staff incurred in the provision of Services during Phase I and Phase II and prior to TEA's receipt of the notice of termination under this Agreement, or (ii) a pre-determined fee to exit the Agreement in the amount of \$156,000.00 (the "Termination Fee").

By TEA. During the period of time spanning the commencement of Phase II and before the Phase III Commencement Date, TEA may terminate this Agreement due to an Event of Default (as defined herein) which is not remedied by SBCCA as provided in Section 25 ("Default") of this Agreement.

4.3 Neither Party may terminate this Agreement after the Phase III Commencement Date for the remainder of the Initial Term, unless (i) there is an Event of Default which is not remedied by the Defaulting Party as required by Section 25 ("Default"), or (ii) a Party's performance under this Agreement is prohibited due to a Change in Law (as defined in Section 32 herein). Either Party may elect to not renew this Agreement by providing a minimum of One Hundred Eighty (180) days' advance written notice prior to the end of the Initial Term (or any Renewal Term) to the other Party (the "Termination Notice Period") provided, however, that the termination date provided in a termination notice shall be selected to be the same date as the date that the CAISO makes the change in its official records to remove TEA as SBCCA's Scheduling Coordinator ("SC"). During the Termination Notice Period, the Parties agree to cooperate with each other to terminate TEA's SC relationship with CAISO in an orderly manner and to protect the interests of the Parties consistent with the terms of this Agreement; including but not limited to, preparation and timely filing of notices and any other documents required by CAISO to affect such termination, including the provision of a replacement SC by the SBCCA, if required for termination of TEA's SC representation of SBCCA. To the extent that TEA has executed on behalf of SBCCA forward market transactions that extend beyond the termination date, SBCCA agrees to reimburse TEA for any charges incurred in the reasonable liquidation of such transactions.

4.3.1 During the Termination Notice Period, SBCCA shall continue to make payments to TEA as outlined in the Compensation section of the Task Order(s) in effect for the Services provided consistent with the payment provisions set forth herein. During the Termination Notice Period, TEA shall perform its services in a manner reasonably calculated to effect such termination in an orderly manner and to protect the interests of the Parties consistent with the terms of this Agreement.

4.4 Task Orders for services referred to in Section 2 ("Scope of Work") hereof may have shorter terms and different termination provisions than the Agreement. Termination of this Agreement shall serve to terminate any Task Order hereunder; provided that any such termination shall not relieve a Party from its obligations incurred prior to such termination.

4.5 The Parties' rights to terminate this Agreement provided in this Section 4 are in addition to the Parties' rights to terminate this Agreement as provided in the Default provisions contained herein.

5. **Compensation.**

5.1 Professional Services.

The basis for and amount of compensation due TEA for the services (the "Compensation") shall be as stated in each Task Order.

5.2 Expenses.

Unless otherwise agreed to in writing in accordance with a Task Order, CCA shall reimburse TEA for reasonable out-of-pocket expenses incurred or accrued by TEA in connection with the provision of Services. Out-of-pocket expenses include, but are not limited to, reasonable travel, business meals or per diem, transportation, lodging, and any other usual and customary business expenses ("Expenses"). Subject to CCA's pre-approval of such expenses, CCA shall also reimburse TEA for special or unusual expenses incurred by TEA in connection with TEA's performance of Services. TEA agrees to manage all Expenses in a prudent manner and will provide CCA with a reasonable accounting for all monthly out-of-pocket Expenses, if any, upon written request.

5.3 Taxes and Fees

Notwithstanding any terms or provisions in this Agreement or the Scope of Work to the contrary, CCA shall be responsible for and shall reimburse TEA for any taxes, including without limitation, sales, use, property, excise, value added and gross receipts levied on the services or Trading Products (as defined herein) provided under this Agreement, except taxes based on TEA's net income.

6. **Relationship of the Parties.**

6.1 Independent Contractor.

TEA shall perform the Scope of Work as an independent contractor and shall not be treated as an employee of CCA for federal, state, or local tax purposes, workers' compensation purposes, or any other purpose. The Parties acknowledge and agree that nothing contained in this Agreement shall be deemed to create or constitute an employer-employee relationship, a partnership, or a joint venture between the Parties.

6.2 Contract Administrators.

CCA and TEA shall each appoint a contract administrator that will be responsible for administering this Agreement (the "Contract Administrator"). The Contract Administrators for CCA and for TEA shall be identified in exhibits to this Agreement.

Either Party may change its respective Contract Administrator by giving advance written notice to the other Party, consistent with the terms of the Notice Section of this Agreement.

6.3 Cooperation of Parties.

CCA shall cooperate with TEA in effecting the Scope of Services under each Task Order, and shall make authorized personnel of CCA available to TEA on reasonable notice and at reasonable times to assist in accomplishing the Scope of Services.

6.4 Non-Exclusive Relationship.

6.4.1 CCA hereby expressly acknowledges that part of the value of the services to be provided by TEA comes from TEA providing the same or similar services as contemplated under this Agreement to other entities. CCA acknowledges that the expertise and business plan of TEA requires that it be able to represent multiple parties and that the services rendered thereby are and may be beneficial to CCA.

6.4.2 Notwithstanding the nature of the Scope of Work, CCA specifically acknowledges that TEA is not precluded from representing or performing similar or related services for, or being employed by, other persons, companies or organizations.

6.4.3 CCA further acknowledges that TEA, from time-to-time, has established, or may establish, contractual relationships with users of power resources or natural gas, and generators or producers of such power resources or natural gas. Notwithstanding the existence of such contractual relationships, CCA desires the assistance of TEA as provided in this Agreement. CCA specifically represents to TEA that the existence of such contractual relationships does not in and of itself create a conflict of interest unacceptable to CCA.

6.4.4 The Parties specifically recognize and accept that there may be purchases and sales of power, natural gas, and financial instruments between and among TEA clients, including CCA, and that such transactions are the normal course of business in providing the services and that such transactions do not create any conflict of interest for TEA in carrying out its obligations pursuant to this Agreement.

6.4.5 CCA agrees to consult with TEA prior to entering into any transactions for wholesale energy products relating to the services provided hereunder, including but not limited to energy, capacity or transmission service and CAISO services or products.

6.5 Allocation of Trading Products.

6.5.1 CCA recognizes that from time to time the Trading Products (as defined herein) that TEA purchases or sells for CCA and other entities may require allocation of amounts available among all such entities including CCA. Decisions by TEA to transact CCA's Trading Products in the market will be made on a non-discriminatory basis and will be based on the same methods and procedures used to purchase or sell Trading Products on behalf of TEA's other clients that hold agreements similar to this Agreement.

6.6 Provision of Trading Services – TEA as principal in the transaction.

6.6.1 TEA shall provide trading services on behalf of CCA with TEA acting as principal in the transaction utilizing trading agreements between TEA and its counterparties (referred to herein as TEA "trading as principal"), including, but not limited to, transacting as principal in the transaction with third parties for electricity products or with the CAISO. Trading as principal shall include electric power, renewable energy credits, resource adequacy capacity, CAISO services, associated transmission, Transactions (as defined in Section 2 of Task Order 2) and other related or ancillary services (collectively, "Trading Products") between TEA and its counterparties. In performing such trading services, TEA will, on the terms and subject to the conditions set forth in this Agreement, be entitled to enter into matching purchase or sale transactions with CCA and third party transaction counterparties ("Transaction Counterparties") under which TEA may purchase Trading Products from CCA for resale to one or more Transaction Counterparties, or may purchase Trading Products from one or more Transaction Counterparties for resale to CCA (any such transaction with a Transaction Counterparty, a "Matching Transaction").

6.6.2 Unless otherwise mutually agreed to by the Parties, any Trading Products purchase or sale transaction between TEA and CCA under a Matching Transaction shall be on the same terms and conditions (except for billing and payment, which shall be pursuant to this Agreement) as the terms and conditions of the applicable Matching Transaction between TEA and the applicable Transaction Counterparty. In the event that TEA purchases Trading Products on behalf of CCA in a Matching Transaction, TEA shall resell such Trading Products to CCA at the same price as TEA paid for such Trading Products, and CCA shall pay TEA the amount payable by TEA to the Transaction Counterparty and the amounts payable to any third parties related to the purchase of Trading Products, including, but not limited to, transmission service charges, transmission loss payment costs, CAISO fees and assessments, and the like, incurred by TEA. In the event that TEA purchases Trading Products from CCA for purposes of resale to a Transaction Counterparty under a Matching Transaction, TEA shall pay to CCA the amount paid by the Transaction Counterparty to TEA less the amounts payable to any third parties related to the purchase of Trading Products from the CCA and resale to the Transaction Counterparty, including, but not limited to,

transmission service costs, transmission loss payment costs, CAISO fees and assessments, and the like, incurred by TEA.

- 6.6.3 Notwithstanding any other provision of this Section to the contrary, if the Transaction Counterparty to a Matching Transaction is another TEA client for which TEA is providing trading services, the price of the transaction shall be set at market.
- 6.6.4 Notwithstanding any terms of this Agreement or the Scope of Work, nothing contained in this Agreement or the Scope of Work hereto shall be construed as requiring TEA to execute any transaction as principal in the transaction where such transaction or traded commodity or instrument is regulated under regulations promulgated pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").
- 6.6.5 Unless otherwise agreed by the Parties and provided the CCA is in compliance with the obligations outlined in Task Order 2, TEA will utilize its established credit facilities and trading agreements to support CCA-specific transactions executed by TEA as principal in the transaction, as more particularly described in the Task Order 2.
- 6.6.6 The CCA may be requested by TEA to provide credit enhancement to support long-term CCA-specific transactions to be executed by TEA as principal in the transaction. The CCA may, in its sole and exclusive discretion, decline to provide credit enhancement, in which case the CCA may enter directly into a contract with the counterparty, and TEA may execute the transactions as CCA's agent, provided the counterparty's credit requirements are met by CCA. In such case, CCA becomes the principal to the transaction with the counterparty and the counterparty relies on CCA's credit.
- 6.6.7 TEA shall not be liable to CCA for the failure of any counterparty, including but not limited to any Transaction Counterparty (i.e., when TEA is trading as principal in the transaction), to pay or perform on its obligations. In the event of such failure by a Transaction Counterparty, TEA shall pursue any action against such defaulting entity at the direction of CCA, at CCA's sole cost and expense.
- 6.6.8 Under no circumstances shall TEA be liable to CCA for the failure of CAISO to pay, or for assessments made by the CAISO for any of the CAISO's Scheduling Coordinators' failure to pay or perform, related to transactions with the CAISO performed on CCA's behalf by TEA as principal in the transaction (i.e., TEA acting as Scheduling Coordinator on CCA's behalf), unless such failure to pay or assessments result from TEA's breach of this Agreement, subject in all cases to the limitations contained in Section 8 hereof.
- 6.6.9 If CCA interrupts a financially firm sale transaction without the contractual right to do so, TEA shall use reasonable efforts to purchase replacement capacity and

energy in the wholesale market place and deliver it. CCA shall receive any resulting gain or be responsible for any resulting loss on the transaction.

6.6.10 Unless otherwise mutually agreed to by the Parties in writing, TEA shall have no obligation to enter into transactions on behalf of CCA utilizing TEA's trading agreements that extend beyond the current termination date of this Agreement, which termination date shall be the last day of the current (i) Initial Term or (ii) if applicable, Renewal Term. If the term of this Agreement is terminated early due to an Event of Default other than bankruptcy, then for existing transactions, TEA and CCA will continue to operate under the terms of this Agreement with regard to such transactions until such time as the individual transactions terminate or are fully settled. Nothing in this Agreement shall prevent TEA and CCA from agreeing to settle any such transaction prior to the previously agreed settlement date of the transaction. Obligations between the Parties to pay for transactions or other Services effected or rendered hereunder shall remain in force notwithstanding the termination of this Agreement.

6.7 Provision of Trading Services – TEA as agent in the transaction.

As mutually agreed to in writing by the Parties, TEA will provide trading services pursuant to this Agreement by trading as agent for CCA utilizing trading agreements between CCA and its counterparties. CCA agrees that effecting a change from TEA trading as principal to TEA trading as agent under transactions made on CCA's behalf, does not release CCA from its obligations to TEA resulting from obligations incurred by TEA under transactions made while trading as principal.

6.8 Conditions Precedent to the Procurement of Power

6.8.1 TEA shall have no obligation to enter into an agreement to purchase (or deliver) power pursuant to the RMA or any individual Task Order, unless and until any Conditions Precedent identified by the Parties in such Task Order have been met.

7. **Indemnification.**

7.1 Subject to the limitations contained in Section 8 hereof, TEA and CCA, to the extent permitted by applicable law, agree to indemnify, hold harmless and defend the other Party and its respective officers, directors, regents, members, subsidiaries, affiliates, partners, and employees from any and all liabilities, claims, actions, legal proceedings, demands, damages, losses, penalties, forfeitures and suits, and all costs and expenses incident thereto (including, but not limited to, costs of defense, settlements and reasonable attorneys' fees), which the other Party may here after incur, become responsible for, or pay out as a result of the death or bodily injury to any person or the destruction or damage to any tangible property to the extent caused in whole or in part by, and in proportion to, any negligent or wrongful act or omission of the indemnifying Party, its employees, officers, directors, or agents in the performance of this Agreement. Neither Party shall be required to indemnify the other Party for liabilities, claims, suits,

actions, legal proceedings, demands, damages, penalties, forfeitures and suits, and all costs and expenses incident thereto (including, but not limited to, costs of defense, settlements and reasonable attorneys' fees), to the extent caused by the negligence or wrongful act or omission of the other Party.

7.2 Notwithstanding the foregoing provisions of this Section, if either Party is prevented by operation of applicable law from obligating itself in any way described in this Section, then the same limitation shall be made applicable to the other party hereto, all to the end that the obligations of the one to the other with respect to the matters mentioned in this Section shall be identical.

8. **Limitation of Liability.**

8.1 TEA shall not be liable to CCA for errors made in the provision of the Services under each Task Order unless such errors are the result of gross negligence or willful misconduct on the part of TEA.

8.2 The cumulative maximum amount of TEA's liability in any 12-month term, if any, arising from any and all claims, lawsuits, actions, other legal proceedings by CCA or any other person or entity arising out of or in connection with TEA's performance or nonperformance hereunder, whether based upon contract, warranty, tort, strict liability, or any other theory of liability, shall be no more than the Compensation for actual work performed by TEA for Services hereunder (excluding payments made for (i) power supply and related credit support, (ii) electric transmission, and (ii) Expenses) for the preceding three (3) months in which the event leading to the claim occurred; provided, if the amount of Compensation for the subject year is not fully known at the time payment of such claim is due, then the payment will be based upon an estimate of the Compensation for the preceding three (3) months and the payment amount will be trued up to actual Compensation when such Compensation is fully known. If TEA should be liable to CCA pursuant to the provisions of this Section 8, payments shall be effected by offsetting monthly amounts due from CCA to TEA as set forth in the provisions relating to Compensation in the Scope of Services. If TEA terminates this Agreement during the period in which its liability payments to CCA are being offset against monthly amounts due from CCA to TEA, TEA shall be obligated to pay any remaining liability payments upon the effective date of such termination.

8.3 Neither CCA nor TEA shall be liable to the other Party for any indirect, consequential, incidental, special or punitive damages, of any kind or nature whatsoever, including but not limited to lost profits or revenues, lost savings, loss of use of a facility or equipment, or loss by reason of increased cost or expense. The provisions of this Section take precedence over any conflicting provision of this Agreement, any Task Order, or any document incorporated into or referenced by this Agreement or any Task Order.

8.4 TEA expressly agrees that notwithstanding any provision in this Agreement to the contrary, (i) the CCA's obligations to make payments to TEA under this Agreement or any Task Order are to be made solely from CCA specific funds and CCA specific

accounts, including the Lock-Box Account or Reserve Account (as set forth in Task Order 2) (hereinafter, the “CCA Funds”) and (ii) other than agreed to by the Parties through written Deposit Account Control Agreements (as set forth in Task Order 2) obligations to make payments hereunder do not constitute any kind of indebtedness of the City of Solana Beach or create any kind of lien on, or security interest in, any property or revenues of the City of Solana Beach or its citizens. This Section shall not exclude TEA from filing a proof of claim or seeking its rights and remedies in a Bankruptcy proceeding involving the CCA.

- 8.5 TEA makes no warranties whatsoever, express or implied, regarding the services or performance thereof, including but not limited to any warranty of fitness for a particular purpose.
- 8.6 In providing Services under this Agreement, in no event shall TEA be liable to CCA for losses which CCA may incur by reason of engaging in risk management strategies recommended by TEA, whether or not implemented by CCA, or due to recommendations not made by TEA in the provision of risk management services.

9. **Notices.**

Any notices, requests, demands or other communications required to be given shall be in writing and shall be deemed to have been duly given if (i) delivered by hand, (ii) mailed by registered or certified mail, postage prepaid, or sent by a reputable overnight carrier such as FedEx, or (iii) sent by facsimile equipment providing evidence of successful facsimile transmission, and addressed to the Contract Administrator for the Parties at their addresses included in attachments to this Agreement, or such changed addresses as may be forwarded to the other Party, consistent with the terms of this Section (“Notices”) of this Agreement.

10. **Proprietary Interest.**

TEA shall retain sole ownership of any patent, copyright, trade secret, trademark, or service mark that TEA has developed or acquired in providing the services under this Agreement. CCA acknowledges and agrees that TEA shall be the sole owner of any intellectual property rights developed by TEA under this Agreement and except as specifically set forth below in this Section, CCA is not receiving any license to use any of those intellectual property rights. TEA shall have the right to use, license and receive royalties or fees for the use of any of the intellectual property rights developed by TEA under this Agreement. To the extent CCA is required to use any of TEA’s intellectual property described above in this Section in connection with the matters described in this Agreement or in any Task Orders or Matching Transactions, then TEA hereby grants to CCA a non-exclusive, non-transferable, fully paid up limited license to use such intellectual property solely for those purposes, which license shall automatically expire on the later of termination of this Agreement, any outstanding Task Orders or Matching Transaction, as applicable. CCA represents and warrants that no state or federal funds or other support is being allocated or expended in connection with its performance under

this Agreement which may provide any federal or state government, agency, or other entity any ownership, rights, licenses or other claims to any intellectual property developed by TEA under this Agreement. CCA expressly waives and disclaims any rights it may obtain to any intellectual property developed by TEA under this Agreement under any applicable federal or state laws, rules, regulations or other enactments.

11. Billing and Payment.

11.1 Billing and payment terms shall be as provided in each Task Order. Payments shall be made by electronic transfer as either an Automated Clearing House (“ACH”) or wire transfer in United States Dollars. Each Party’s banking information is provided in exhibits to this Agreement and a Party’s account information may be amended by providing the other Party advance written notice.

11.2 Payments owed pursuant to this Agreement and not received when due shall be considered overdue. Interest will accrue on any unpaid amounts as of the day after the due date at a rate equal to the prime interest rate as established by PNC Bank, N.A. plus 300 basis points (the “Interest Rate”).

11.3 In the event that any portion of an invoice related to a Matching Transaction is in dispute, then the dispute shall be governed by the dispute provisions of the market rules or contracts governing the specific transaction with the Transaction Counterparty.

11.4 In the event that any portion of an invoice for TEA’s Compensation is in dispute, the undisputed amount shall be paid when due and payment may be withheld on the disputed amount. CCA shall notify TEA immediately of the reason for the dispute and the Parties shall cooperate to resolve the dispute. If either Party, after payment is made, discovers an error that is discernible from the terms of the invoice, the disputing Party has the right to dispute the error within one hundred eighty (180) days from the date of invoice or within one hundred eighty (180) days from termination of this Agreement, whichever comes first. Upon determination of the correct billing amount, if the disputed amount is found owing to the other Party, it shall promptly be paid to the other Party after such determination. For disputed amounts or billing errors that are discovered through the exercise of the audit rights pursuant to this Agreement, the other Party must receive written protest within one hundred eighty (180) days from completion of an audit conducted pursuant to Section 22 herein.

12. Reserve Account.

The Parties agree that based on reasonable financial projections for the anticipated purchase and sale of power, CCA shall retain, fund, or otherwise set-aside monies from CCA Revenue into a designated commercial bank account at least equal to the required amount of reserves or capital necessary, as agreed upon by the Parties and described in such Task Order.

13. **Provision of Services by Third Parties.**

Unless expressly provided by the terms and conditions of this Agreement or a Task Order, TEA's business partners or other third parties (collectively, "Third Parties") which have been retained by CCA to provide services to CCA, are independent of TEA and not TEA's agents. The Parties hereby agree that TEA shall not be liable for (i) the performance of any services provided by Third Parties to CCA, or (ii) CCA's obligations to Third Parties.

14. **Standard of Care.**

The standard of care applicable to the provision of the services will be that of "Prudent Utility Practice." Prudent Utility Practice shall mean any of the practices, methods and acts that would be followed by a significant portion of the electric utility industry during the relevant time period, and in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could reasonably have been expected to produce the desired result consistent with good business practices, reliability, safety and expedition. Prudent Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a range of acceptable practices, methods or acts. Prudent Utility Practice does not exclude the possibility of unintentional errors, mistakes, or other foibles of human nature, for which a Party shall not be liable. Nothing in this Agreement shall be construed to create any duty to or any standard of care with reference to any person not a party to this Agreement.

15. **Successors and Assignment.**

15.1 Unless otherwise provided in the Scope of Services, neither Party shall assign nor delegate performance of its duties under this Agreement to any person or entity without the written consent of the other Party, such consent not to be unreasonably withheld, conditioned, or delayed.

15.2 Subject to the foregoing restrictions in this Section, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective permitted successors and permitted assigns.

16. **Severability.**

If any provision of this Agreement shall be deemed invalid or unenforceable in any respect for any reason, the validity of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

17. **No Waiver.**

A provision of this Agreement may be waived only by a written instrument executed by the Party waiving compliance. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision.

18. **Further Assurances.**

From time to time, each of the Parties shall execute, acknowledge and deliver any instruments or documents necessary to carry out the purposes of this Agreement.

19. **No Third Party Beneficiaries.**

Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties, any right or remedy of any nature whatsoever, except for persons entitled to indemnification pursuant to Section 7.

20. **No Legal Services.**

No Provision of Legal Services by TEA. CCA acknowledges that, with respect to the services rendered or to be rendered by TEA under this Agreement: (i) TEA is not authorized to give legal advice and (ii) TEA does not intend to give and has not given CCA legal advice. CCA represents to TEA that CCA (i) has obtained and shall obtain legal advice from CCA's own legal counsel regarding the legal aspects of any advice given or services performed by TEA under this Agreement and (ii) has not relied and shall not rely on TEA for the giving of legal advice. CCA hereby waives and releases any claim that CCA may now or hereafter have that CCA has relied, directly or indirectly, on any advice given by TEA, or to be given by TEA, in connection with this Agreement as being in the nature of legal advice, and further waives and releases any claim for damages resulting therefrom.

21. **Resettlement.**

21.1 From time-to-time transactions that may have otherwise been fully completed and settled may be required to be resettled due to market rules (often in the case of RTO markets) or order of a court, regulatory authority, or other entity with jurisdiction to order such. If such resettlement related to any transaction performed by TEA on behalf of CCA results in a refund to TEA from a third party, TEA shall pay to CCA any such refund received by TEA. If such resettlement related to any transaction performed by TEA on behalf of CCA results in TEA owing an amount to a third party, CCA shall pay to TEA any such amount owed by TEA. This provision shall survive the termination of this Agreement.

22. **Audit Rights.**

During the term of this Agreement, and for one year following the effective date of termination, each Party may audit the other Party's books and records for the most recently past twelve month period for the sole purpose of verifying the calculation of payments made or received, including the calculation of pricing or Compensation due pursuant to this Agreement; provided that neither Party may conduct more than one such audit during any consecutive six-month period; and further provided that the Parties' audit rights under this Section shall not extend the period of any audit rights identified in a Task Order. Furthermore, following termination of this Agreement, neither Party may conduct more than one such audit during the one-year period referred to above. Any such audit shall be conducted at the audited Party's offices during its normal business hours, at the auditing Party's own expense. Copies of audit reports shall be provided to the non-

auditing Party upon such Party's payment of copying and delivery costs. If following such audit, the Parties agree that any billing or payment in the previous year was incorrect, or it is otherwise found that such is the case, the Party owed such amount shall submit an invoice to the owing Party and the owing Party shall make payment of any undisputed amount no later than thirty (30) days after receipt of such invoice. Any such payments shall include applicable interest at the Interest Rate, accrued as of each payment's original due date.

Each Party shall maintain the confidentiality of the other Party's accounting records and supporting documents in compliance with the Confidentiality Section herein and shall use them only for the purpose of confirming the accuracy of billings and payments under this Agreement. In the event such information is required to be disclosed in a legal or regulatory proceeding, or otherwise required to be disclosed by law, the affected Party shall notify the other Party at the time of the request so that the affected Party may seek at its own expense to preserve the confidentiality of the information.

23. Force Majeure Event.

23.1 For purposes of this Agreement, "Force Majeure Event" means an event that prevents the claiming Party from performing any of its obligations under or in connection with this Agreement, that is not within the reasonable control of, or the result of the negligence of, the claiming Party, and that by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome. Force Majeure Events may include, but are not restricted to: acts of God; acts of the public enemy, war, blockades, insurrections, civil disturbances and riots; epidemics; landslides, lightning, earthquakes, firestorms, hurricanes, tornadoes, floods, washouts, and extreme weather conditions; fire, explosion, breakage, freezing or accidents to machinery or lines of pipe; strikes, lock-outs or other industrial disturbances or labor disputes; labor or material shortage; sabotage or terrorism; and order or restraint by governmental authority (so long as the claiming Party has not applied for or assisted in the application for, and has opposed where and to the extent reasonable, such order or restraint).

23.2 Except as otherwise provided in this Section, neither Party to this Agreement shall be considered to be in default in performance of any obligation hereunder if failure of performance shall be due to a Force Majeure Event. A Party shall not, however, be relieved of liability for failure of performance if such failure is due to events arising out of removable or remediable events which it fails to remove or remedy with reasonable dispatch. Any Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall exercise due diligence to remove such inability with all reasonable dispatch. Nothing contained herein, however, shall be construed to require a Party to prevent or settle a strike or labor disagreement against its will. Notwithstanding the provisions of this Section, payment of liquidated damages or penalties due to nonperformance under the terms and conditions of transactions entered into on CCA's behalf shall not be excused because of a Force Majeure Event.

23.3 If the claim of Force Majeure Event is in respect to any Matching Transaction or Trading Product, the Force Majeure provisions of the TEA trading agreement under which such Matching Transaction or Trading Product is provided shall govern such claim.

24. **Recording.**

24.1 Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation between CCA and TEA, each Party (i) consents to the monitoring of, and creation of a tape or electronic recording (“Recording”) by TEA of, all telephone conversations between the Parties to this Agreement, but only related to those individuals conducting CCA Transactions under this Agreement, (ii) agrees that any such Recordings will be owned by TEA, retained in confidence, secured from improper access, and (iii) acknowledges that such Recordings may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers, employees, and agents of such monitoring or recording and to obtain any necessary consent of such officers, employees, and agents. The Recording, and the terms and conditions of a transaction discussed by the Parties in such Recording, if admissible, shall be the controlling evidence of the Parties’ agreement with respect to a particular transaction between the Parties in the event a confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a confirmation, such confirmation, absent manifest error, shall control in the event of any conflict with the terms of a Recording.

25. **Default.**

25.1 Each of the following shall constitute an “Event of Default” with respect to a Party (the “Defaulting Party”) under this Agreement:

25.1.1 the failure to make, when due, any payment (including Power Payments as defined in Task Order 2) or funding obligation, other than TEA service fees, required (a “Payment Failure”) pursuant to this Agreement if such failure is not remedied within four (4) business days (“Cure Period”) after written notice of such a Payment Failure. However, the Cure Period shall be reduced to two (2) business days after written notice of such Payment Failure, if the Defaulting Party has triggered a Payment Failure in the prior six (6) months.

25.1.2 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;

25.1.3 the failure to perform any obligations, other than obligations set forth in Section 25.1.1 of this Agreement, if such failure is not remedied within thirty (30) days after written notice of such as breach;

25.1.4 a Party becomes Bankrupt. For purposes of this Agreement, “Bankrupt” means with respect to either Party, the Party (i) 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, or has any such

petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) 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 (v) is generally unable to pay its debts as they fall due.

25.2 If an Event of Default with respect to a Defaulting Party has occurred, and if the Event of Default is not caused by a Force Majeure Event as described in Section 23 hereof, then the non-defaulting Party shall have the right to (i) suspend performance, (ii) designate an early termination date, or (iii) immediately terminate this Agreement subject to any surviving obligations. Both Parties shall continue to make payments then due or becoming due with respect to performance or payment obligations which arose prior to the date of termination.

26. **Dispute Resolution.**

26.1 Except as otherwise provided herein, the Parties shall act in good faith to first seek resolution of any dispute arising hereunder through negotiation between the operating personnel of each Party. If the dispute cannot be settled through such negotiations within a period ending no longer than thirty (30) days of the date on which one Party notifies the other in writing of a dispute, the senior executive officers (or their designees who shall be empowered with the same authority as the senior executive officers to settle such dispute) of each Party will personally and in good faith seek to resolve the dispute through negotiation one with the other for a period ending no longer than ten (10) days after the end of the 30-day period described above before resorting to any other dispute resolution procedure.

26.2 After the expiration of the periods described in Section 26.1, the Parties agree to endeavor to resolve claims or disputes through mediation, prior to litigation. Either Party may request in writing for the Parties to participate in formal mediation (the "Notice of Mediation"). The mediator will be selected by the Parties. The Mediation shall be held within 30 days of selection of a mediator, in San Diego County or at a neutral location to be selected by the Parties. The mediation shall continue until one or both Parties declare an impasse, or a written settlement is executed by the Parties. All communication during the mediation process shall be confidential and treated as settlement negotiations under the applicable rules. Notwithstanding the forgoing, Section 26.1 and 26.2 shall not apply in the event that either Party commences an action under the Bankruptcy Code.

26.3 If mediation is unsuccessful or results in an impasse between the Parties, 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.

27. **Certain Representations.**

27.1 CCA represents that (i) CCA is authorized to enter into and execute this Agreement in connection with the Purposes stated herein; and (ii) CCA is either not subject to federal income tax or its income is exempt under Section 115 of the Internal Revenue Code.

27.2 Each Party represents and warrants to the other Party that it is and will remain duly organized, validly existing, and in good standing under the laws of the state of its organization throughout the term of this Agreement, and that the execution, delivery and performance of this Agreement are within its express or implied statutory powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents or applicable laws.

28. **Confidentiality.**

The Parties acknowledge that certain information and materials exchanged during the term of this Agreement, including this Agreement, may contain proprietary and Confidential Information of the disclosing Party. "Confidential Information" means and includes any and all information including, without limitation, trade secrets, analyses, compilations, forecasts, studies, techniques, plans, designs, cost data, pricing data, financial data, customer information and employee information, disclosed by a Party to the other party before, on, or after the Effective Date which relates in any manner, directly or indirectly, to the disclosing Party and/or its business, whether such information is disclosed in writing, verbally, electronically, or otherwise. Confidential Information shall specifically include, but not be limited to (i) any information disclosed in written form and clearly marked "Confidential" and (ii) information which would reasonably be considered proprietary, trade secret, and confidential. The receiving Party agrees that such Confidential Information shall be held confidential, to the extent permitted by law, under the same safeguards as it treats its own confidential information and that it will not use, copy or disclose the Confidential Information other than for the sole purpose of supporting or performing the services in connection with this Agreement. The Confidential Information may be disclosed to officers, directors, employees, agents, representatives or consultants (who shall agree to be bound by the terms of this Section) of the receiving Party on a need to know basis, and shall not be disclosed to any third party without first having obtained the written permission of the disclosing Party. Confidential Information shall specifically exclude any information which the receiving Party can show (i) was known to or was independently developed by the receiving Party without access to or use of the Confidential Information of the disclosing Party; (ii) was disclosed to the receiving Party in good faith by a third party who had the right to make such disclosure; (iii) was made public by the disclosing Party, or was established to be part of the public domain other than as a consequence of a breach of the Agreement by the receiving Party; or (iv) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information as shown by documents and other competent evidence in the receiving Party's possession.

If the receiving Party is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, regulatory proceeding or similar legal or regulatory process to disclose any Confidential Information supplied to the receiving Party by the disclosing Party, the receiving Party shall provide the disclosing Party with prompt notice of such request(s) and adequate time for the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. However, disclosure pursuant to a legal order or statutory obligation shall not constitute a breach of this Section. The Parties agree that this Agreement and any Task Orders executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.).

29. **No Immunity.**

CCA is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself or CCA Funds (as described herein) from (i) suit alleging breach of this Agreement, (ii) jurisdiction of any court in California, or (iii) execution or enforcement of any judgment to which TEA might otherwise be entitled in any proceedings nor may there be attributed to CCA any such immunity (whether or not claimed); provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

30. **Entire Agreement.**

This Agreement supersedes any and all prior or contemporaneous agreements, whether written or oral, between the Parties hereto with respect to the subject matter of this Agreement. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made with respect to the subject matter of this Agreement that are not embodied in this Agreement, including any Task Order or exhibits or schedules attached hereto.

31. **Governing Law and Forum.**

This Agreement shall be subject to and construed under the laws of the State of California without resort to its conflicts of laws principles. Subject to the requirements and conditions precedent of Section 26 (Dispute Resolution), any dispute relating to this Agreement may be brought in any court of competent jurisdiction.

32. **Compliance with Law.**

Notwithstanding any other provision of this Agreement, TEA and CCA shall at all times during the term of this Agreement comply with all applicable laws, regulations, orders and decrees of governmental authorities with jurisdiction. If there occurs a material change in any law, order, or regulation (each a "Change in Law") which prohibits performance by a Party (the "Affected Party") under this Agreement beyond the effective

date of such Change in Law, the Affected Party shall give the other Party (the "Non-Affected Party") at least thirty (30) days' prior written notice (the "Notice Period"). During the Notice Period, the Parties shall make a good faith effort to resolve the issue and minimize any such economic impact caused by the Change in Law. If a mutual agreement is not reached, then early termination shall take effect as of the effective date of such Change in Law.

33. **Amendment.**

This Agreement may be amended only by an instrument in writing signed by the authorized representatives of both Parties. Task Orders, exhibits or schedules to this Agreement may be amended as set forth in such Task Order, exhibit or schedule.

34. **Counterparts.**

This Agreement may be executed by the Parties in one or more counterparts, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

35. **Waiver of Jury Trial and Consent to Relief from the Automatic Stay.**

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY TASK ORDER CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS, WHETHER VERBAL OR WRITTEN, OR ACTIONS OF EITHER PARTY. CCA FURTHER AGREES AND CONSENTS TO AN IMMEDIATE LIFTING OF THE AUTOMATIC STAY IMPOSED BY SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE IN ANY BANKRUPTCY CASE FILED BY CCA WITH RESPECT TO TEA'S RIGHT TO PURSUE ITS REMEDIES AGAINST ANY COLLATERAL OR LETTER OF CREDIT SECURING THE INDEBTEDNESS FOR THE PROCUREMENT OF POWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR TEA EXECUTING THIS AGREEMENT.

36. **Task Orders, Exhibits, Schedules, and Controlling Terms.**

All Task Orders, exhibits, schedules and related attachments which are attached to this Agreement are incorporated by reference, as if set out in full herein. The provisions of each Task Order including exhibits, schedules and related attachments are subject to the Terms and Conditions of the RMA between the Parties. If any provisions of any Task Order including any exhibit, schedule or related attachment conflicts with any provisions in the RMA, the provisions of the RMA shall take precedence. If any provisions of Task Order 1 conflict with those of Task Order 2, the provisions of Task Order 2 shall take precedence over the Terms of Task Order 1.

37. **Authorization.**

The Parties hereby warrant that the persons executing this Agreement are authorized to execute and obligate the respective Parties, its successors and assigns, to perform under this Agreement in accordance with its terms. Each Party represents and warrants to the other Party that it is and will remain duly organized, validly existing, and in good standing under the laws of the state of its organization throughout the term of this Agreement; and that the execution, delivery and performance of this Agreement are within its express or implied statutory powers, have been duly authorized by all necessary action, and do not violate any of the terms or conditions in its governing documents or applicable laws.

38. **Acknowledgement of Parties.**

By executing this Agreement, each Party acknowledges having read this Agreement, and that, after a full opportunity to discuss the terms of this Agreement with any representative or counsel of the Party's choice, fully understands the Agreement and voluntarily enters into this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their respective duly authorized representatives as of the date written in the first paragraph of this Agreement.

THE CITY OF SOLANA BEACH d/b/a SOLANA BEACH CCA

THE ENERGY AUTHORITY, INC.

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

Date: _____

Date: _____

Task Order 1 for Phase I and Phase II Core Services

TEA and SBCCA agree that the following terms and conditions constitute Task Order 1 for Phase I and II Core Services (“Task Order 1”).

Section 1. Scope of Services for Phase I (Program Development)

During Phase I, TEA shall provide to SBCCA certain technical and analytic services (hereinafter, the “Development Services”) on a time and materials basis. For purposes of this Task Order 1, the Development Services offered by TEA are separated into and described in Section 1.1 (Community Engagement Support), Section 1.2 (Technical Analysis), Section 1.3 (Financial Analysis), Section 1.4 (Risk Analysis), Section 1.5 (Support Tasks), Section 1.6 (TEA’s Phase I Assessment), and Section 1.7 (SBCCA Implementation Plan).

Section 1.1 Community Engagement Support

The focus of community engagement will be a collaborative effort between TEA, Calpine and City staff to build community awareness and acceptance of the CCA program. This effort will include outreach focused on local community leaders to ensure their understanding of the CCA program.

1.1.1 Communication and Program Strategies

TEA will work with Calpine and City staff to develop communication to inform key stakeholders about the CCA program: how it works and what’s being considered in Solana Beach. This task includes the early outreach to inform the community about customer enrollment in Phase 2.

1.1.2 Support the Creation / Design of Program Collateral

TEA anticipates the City will develop brand and key communication pieces—both print and digital—for distribution/education of key stakeholders, the press, and the community at large. TEA will support Calpine and the City to provide the needed information and analysis required to develop effective materials.

1.1.3 Engage City Officials, Community Stakeholders, Key Customer Groups and Press

TEA will work with Calpine and support the City in building concept and program awareness, including educating local advocates to assure participation and accuracy. Key tasks include supporting:

- Working with the City staff on informational workshops and webinars, small group meetings and 1:1 briefings as may be needed;
- Conducting a ‘train the trainer’ workshop for the City staff and local advocates to ensure dissemination of consistent and accurate information;
- Supporting the City staff and Calpine in drafting Op-Eds and scheduling interviews with key press contacts.

Section 1.2 Technical Analysis

1.2.1 Load Study and Forecast

TEA will develop a load forecast model that forecasts both total energy usage and peak demand by customer load class using a two-step process. The first step will be to incorporate incremental adjustments for known changes to recent historical energy usage. The second step will be to apply an annual growth factor that can be adjusted to account for the effects of variables such as the following: (i) growth in overall energy usage due to population and economic growth; (ii) declines in per person

electricity demand due to increased efficiencies; (iii) growth in electricity demand due to fuel switching towards electric cars and heating; (iv) declines in grid electricity usage due to rooftop solar, distributed battery storage adoption; and (v) changes in the hourly shape of electricity usage due to all of the above. The load forecast will also incorporate transmission and distribution level losses for the California Independent System Operator (“CAISO”) and San Diego Gas & Electric Company (“SDG&E”), respectively.

The load forecasting model will output results into an Excel-based template that will be integrated with the Pro Forma Model discussed later in this section. The template will include (i) toggles to adjust for the variables described in the preceding paragraph, (ii) selections to allow the incorporation or exclusion of direct access loads, if applicable, (iii) toggles to adjust opt-out rates and inclusion/exclusion of SBCCA member communities, if applicable, and (iv) charts to visualize the load data.

1.2.2 Rate Analysis

TEA will use the Pro Forma Model, with specific reserve accumulation objectives, to determine overall revenue requirements. Included as part of this task will be an analysis of future SDG&E rates based on the scenarios described in the request for proposal (“RFP”). TEA will then use the SDG&E rate structures, current rates, and projected future rate growth as the basis for constructing a rate structure for SBCCA and determining an expected discount or premium to SDG&E’s rates through time. Toggles will be available in the Pro Forma Model to modify supply portfolios and other key variable to determine the rate discount or premium relative to SDG&E under a variety of scenarios. This will help develop SBCCA reserve targets with the goal of maintaining rate stability and rate parity in the future. Finally, there will be the capability to define multiple service levels with different renewable or carbon attributes and different rates, and determine the impact on overall revenue based on assumptions about adoption levels for each service.

1.2.3 Supply Scenarios for CCA

The Pro Forma Model will have the ability to select different resource portfolios. The portfolio selections will determine the percentages of: California qualified renewables; renewables procured locally; renewable supply from each REC category; zero-carbon but non-renewable qualified supply (i.e., large hydro); with the balance being assumed to be system power. TEA will also work with SBCCA staff and local officials during this task to determine the appropriateness of utilizing “bucket 2” and “bucket 3” RECs in meeting renewable portfolio standard (“RPS”) and greenhouse gas (“GHG”) reduction goals. The ultimate objective is for TEA and SBCCA to establish and model the supply portfolios that best meet the desired cost, environmental attributes, and GHG levels sought by SBCCA to assess the ability of SBCCA to meet its program goals and objectives.

Section 1.3 Financial Analysis

The Pro Forma model will capture base case and alternative scenario results of the significant drivers of SBCCA’s financial performance including, but not limited to, the following:

- Load forecasts;
- Wholesale power prices;
- Contracted or owned power supply costs;
- Resource Adequacy charges;
- REC charges;
- Rooftop and community solar penetration and net-metering and feed-in-tariff rates;
- Administrative, start-up and operating costs;

- PCIA charges;
- SDG&E rates under the current and the new California Public Utilities Commission (“CPUC”) approved 2-tier rate design;
- GHG emissions for each supply scenario;
- Energy efficiency, net metering and feed-in-tariff programs;
- Opt-out and participation rates by rate class;
- Participating jurisdictions; and
- Reserve accumulation and debt service coverage ratios through time.

Section 1.4 Risk Analysis

TEA will identify and document the primary risks SBCCA will face and the means of managing these risks including:

- Financial Risk - this risk primarily consists of the CCA’s ability to maintain adequate cash flow, particularly during the early stages of the program;
- Competitive Rate Risk - this risk primarily consists of whether the CCA can provide power with the desired renewable mix and GHG concentration at rate levels competitive with SDG&E;
- Wholesale Market Risk - this risk primarily consists of (1) a supplier default, which would force the CCA to procure replacement supplies at a higher cost; and (2) balancing the cost certainty of long-term fixed cost supply against the potential risk and rewards of procuring a portion of its supply in shorter-term markets at potentially lower or higher cost;
- Regulatory Risk - this risk primarily consists of the California Public Utilities Commission (“CPUC”) ratemaking and policy-making functions that can affect CCA viability including items such as Exit Fees, Cost Allocation, and Rate Design, among other issues; and
- Political Risks - this risk primarily consists of opposition during the CCA’s formation at a macro level from the CPUC and California Legislature.

Section 1.5 Additional Phase 1 Support Tasks

TEA will provide additional Phase 1 tasks to support early formation efforts and prepare for Phase 2 launch to include the following:

- Coordinate and refine, with SBCCA and Calpine, a project timeline and detailed project plan for CCA formation and launch. This will include a spreadsheet mapping all of the steps and timing of CCA formation through customer enrollment and into early operations.
- Assist SBCCA and Calpine, as necessary, with drafting written and presentation materials, and other reports related to governance and community outreach; and participate in Solana Beach City Council and other community meetings to discuss CCA.
- Implement weekly calls and/or GoToMeetings with SBCCA and the Calpine, as necessary, to ensure all TEA tasks are assigned and major milestones are being met.

Section 1.6 TEA’s Phase I Assessment

1.6.1 Summary

SBCCA has already undertaken a Technical Study and contracted for a peer review of the Technical Study, independent of TEA. Nevertheless, TEA will perform an independent evaluation of overall feasibility of the SBCCA since the financial ProForma Model and analysis required to assess feasibility will be required to determine Phase II and III activities. The analysis performed by TEA will provide a clear assessment for SBCCA of the overall feasibility of its CCA program as it relates to meeting key goals, such as environmental benefits and cost competitiveness. The assessment will show alternative supply scenarios and how they compare to SDG&E in terms of GHG content of the energy mix, an estimation of the percentage of renewable energy content that can be procured from locally-

generated electricity, as well as the potential rate savings (or rate increases) of each scenario compared to SDG&E over the forecast period.

1.6.2 TEA's Phase I Timeline

TEA anticipates that it will take approximately sixty (60) days after receipt of load data to develop its ProForma Model and complete its assessment.

1.6.3 TEA's Phase I Study ("Study") Process and Deliverables

The following deliverables will be provided during the course of compiling the Study:

- Weekly updates with SBCCA staff. TEA will provide a summary level status report, as well as, a standing 30 minute call.
- Verification of completeness of load data request of SDG&E and identify additional follow-up with SDG&E, if needed.
- A final PowerPoint presentation of:
 - The draft assessment results;
 - The final assessment results; and
 - All Excel-based analysis and models developed in completing the Study.

Section 1.7 SBCCA Implementation Plan

The SBCCA Implementation Plan (the "Plan") is a California Public Utilities Commission ("CPUC") requirement that covers the main aspects of the CCA plan of operations. It must be certified by the CPUC (within 90 days of submission) before the CCA can begin serving customers. TEA, in coordination with Calpine and SBCCA staff, will draft the Implementation Plan in accordance with all CPUC requirements and established best practices. The SBCCA Implementation Plan will include a description of the following:

- CCA's organizational structure, including the program's operations and funding;
- CCA's rate setting or pricing strategy, and other costs to participants;
- Disclosure and due process requirements in setting rates and allocating costs among participants;
- General description of CCA service offerings, including default supply product, voluntary green pricing option(s), and others, if applicable;
- Identification of customer programs that will likely be developed, including net metering, feed-in-tariffs, demand response, energy storage, or others;
- Description of CCA organizational structure;
- Methods for entering and terminating agreements with other entities;
- Participant rights and responsibilities;
- Procedure for termination of the program; and
- Description of third parties that will be supplying electricity under the program, including information about financial, technical, and operational capabilities.

Before the City Implementation Plan can be submitted to the CPUC, the following items must be determined and articulated in the Plan:

- Community Participation, as determined by passage of the CCA ordinance

- Program Phasing, if any, by customer class and timing of each
- General description of CCA's rate/pricing strategy
- General description of CCA service offerings: default supply product, voluntary green pricing option(s), and others, if applicable
- Identification of customer programs that will likely be developed, including net metering, feed-in-tariffs, demand response, energy storage, etc.
- Description of CCA organizational structure

Section 2. Scope of Services for Phase II (Program Launch)

During Phase II, TEA shall provide to SBCCA certain implementation services (hereinafter, the "Launch Services") on a time and materials basis. For purposes of this Task Order 1, the Launch Services offered by TEA are separated into and described in Section 2.1 (SBCCA Regulatory Functions), Section 2.2 (CCA Organizational Infrastructure), Section 2.3 (Procurement and Vendor Engagement), and Section 2.5 (Rate Setting and Policies).

Section 2.1 SBCCA Regulatory Functions

The Parties agree that certain regulatory steps must be facilitated during the Phase II and prior to Phase III (Program Operations) of the CCA. Accordingly, TEA will assist SBCCA with the completion of the following:

- Prepare for CAISO market participant requirements, including identifying agreements between SBCCA and CAISO necessary to prepare for Program Operations and posting of required credit facilities;
- Submitting a Statement of Intent with the CPUC;
- Additional registration requirements with the CPUC;
- Execution of CCA Service Agreement with SDG&E;
- Posting of credit collateral with SDG&E;
- Submitting a Binding Notice of Intent with SDG&E;
- Registration with California Air Resources Board (including CITSS registration); and
- Registration with Western Renewable Energy Generation Information System ("WREGIS").

Section 2.2 CCA Organizational Infrastructure

In order to implement an optimal organization that meets SBCCA's requirements, TEA will collaborate with SBCCA staff to ensure that SBCCA is well positioned for Program Launch and operations. This will include the development (or refinement) of a business operations plan, review of operational policies and procedures, committee structures and a staffing plan to ensure that all core functions are in place, either outsourced through the TEA and Calpine services or augmented by existing SBCCA staff and administrative infrastructure.

Section 2.3 Procurement and Vendor Engagement.

2.3.2 Financial Services

SBCCA will require accounting, banking and auditing services for the CCA program in order to maintain separation of duties and fiduciary oversight. TEA, working in cooperation with SBCCA and

Calpine, is able to assist SBCCA in contracting for these services, to the extent such support does not create a conflict of interest.

2.3.2 Negotiation and Contracting Services

TEA will provide assistance with negotiations and contracting with existing or new local generation facilities, which SBCCA may elect to pursue. At the appropriate time, TEA will work with SBCCA to procure the legal services required, if any, to supplement this effort.

2.3.3 Procurement Services

TEA is a power marketer and certified CAISO Scheduling Coordinator. TEA has established credit facilities and contracts in place with an extensive list of market participants in California and Western energy markets that it will utilize in procuring all of the initial power supply needs of SBCCA including energy, resource adequacy and RPS. SBCCA will have full transparency into procurement efforts including the counterparties from whom TEA receives bids on behalf of SBCCA and the ultimate prices paid by TEA for the different components of SBCCA's power supply. The Parties agree that a separate Task Order 2 will need to be executed between the Parties prior to TEA beginning to procure power and negotiate any contracts needed to enable such power procurement.

Section 2.4 *This section is reserved.*

Section 2.5 Rate Setting and Policies

2.5.1 Rate Setting, including policies to encourage distributed generation.

TEA will assist SBCCA with evaluating the factors involved in rate setting and rate policy making. TEA will assist SBCCA with a determination of (i) its overall revenue requirements, (ii) rates based on a method (or methods) of allocating the cost of providing service to support viable rates, (iii) development of the actual rates, and (iv) a verification method that the rates as designed will generate revenues sufficient to satisfy the overall revenue requirement for SBCCA.

2.5.2 Development of Retail Rates

As a first step, TEA will assist SBCCA with evaluating all relevant cost data, including all applicable operating cost, capital cost, loan repayment, credit and reserve requirements. The revenue requirements will be allocated via a cost of service analysis to the appropriate customer classes, which are currently expected to include the following classes (the "Customer Classes"):

- Residential
- Residential CARE
- Small Commercial
- Medium Commercial
- Large Commercial
- Agriculture

Rates will be designed for each of the customer rate schedules that are consistent with the methodology employed by SDG&E so as to be comparable to SDG&E rates. TEA's recommendation is that a constant rate adjustment factor be applied uniformly across all rate classes to derive SBCCA generation rates. Testing will be conducted in order to verify that the rates will generate sufficient revenues to achieve the revenue requirements.

2.5.3 Development of FIT and NEM Rates

As a second step, TEA will assist with developing Net Energy Metering (“NEM”) and Feed-in-Tariff (“FIT”) rates that will be calculated using power cost data developed by TEA. A 100 percent renewable voluntary “opt-up” option may also be considered. TEA will work with SBCCA to design NEM and FIT rates that align with the goals and objectives of SBCCA and the local community.

Within the second step, renewable rates will be developed for each of the Customer Class rate schedules identified in the initial step. TEA will provide the cost data for the resources used to meet these requirements, as well as estimated sales and load information to facilitate rate development.

Section 3. Term and Termination of Task Order 1.

Section 3.1 Term of Task Order 1.

This Task Order 1 shall become effective and Services pursuant to this Task Order 1 shall commence on the Effective Date of the Agreement, and shall continue until the Power Start Date (as defined in Task Order 2) (hereinafter, the “Task Order 1 End Date”). The expiration or termination of this Task Order 1 shall not affect the term of the RMA.

3.1.1 Term of Phase I.

Phase I shall commence on the Effective Date of the Agreement and continue until the commencement of Phase II.

3.1.2 Term of Phase II.

Phase II shall commence on the date on which the Solana Beach City Council approves the Implementation Plan and authorizes submittal of the Plan to the CPUC, and will continue until the Task Order 1 End Date.

Section 3.2 Termination.

Either Party may terminate this Task Order 1 by either (1) terminating the RMA; or (2) terminating this Task Order 1 pursuant to the terms of RMA Sections 4 (“Events of Termination”) or RMA Section 25 (“Default”).

Section 4. Compensation for Services Provided in Task Order 1.

Section 4.1 Compensation for Phase I Services.

For the Development Services defined in Section 1 of this Task Order 1, TEA will record the hours expended on a time and materials basis for all activities associated with Section 1 based on TEA’s Billing Rates (as provided in Section 8 herein) per hour incurred by TEA staff (the “Phase I Fees”). In consideration for the Development Services performed by TEA hereunder, SBCCA shall pay TEA the amount of Phase I Fees.

Notwithstanding the foregoing, and provided there is no SBCCA Event of Default for either the RMA or this Task Order 1, the Parties agree to defer the amount owed to TEA for the Phase I Fees until Phase III. The amount owed by SBCCA for deferred Phase I Fees shall be calculated and paid in accordance with Task Order 2. Furthermore, the Parties agree that if there is an Event of Termination in compliance with the RMA Section 4.3 during the Termination Window (as described in the RMA), then SBCCA shall not owe for the amount of the Phase I Fees.

Section 4.2 Compensation for Phase II Services.

For the Launch Services defined in Section 2 of this Task Order 1, TEA will record the hours expended on a time and materials basis for all activities associated with Section 2 based on TEA's Billing Rates (as provided in Section 8 herein) per hour incurred by TEA staff (the "Phase II Fees"). In consideration for the Launch Services performed by TEA hereunder, SBCCA shall pay TEA the amount of Phase II Fees.

Notwithstanding the foregoing, and provided there is no SBCCA Event of Default for either the RMA or this Task Order 1, the Parties agree to defer the amount owed to TEA for the Phase II Fees until Phase III. The amount owed by SBCCA for deferred Phase I Fees shall be calculated and paid in accordance with Task Order 2. Furthermore, the Parties agree that if there is an Event of Termination in compliance with the RMA Section 4.3 during Phase II, then SBCCA shall owe TEA the Termination Fee (as defined in the RMA) in lieu of the amount of the Phase II Fees.

During the term of the RMA and this Task Order 1, compensation and fees owed to TEA, excluding the deferred Phase I Fees and Phase II Fees, will be adjusted on an annual basis by the greater of (i) 3% or (ii) the U.S. Government Consumer Price Index for All Urban Consumers (the "CPI-U") beginning on the second anniversary of the RMA Effective Date.

Section 5. Controlling Terms and Conditions.

The provisions of this Task order 1 are subject to the Terms and Conditions of the RMA between the Parties. If any provisions of this Task Order 1 conflict with any provisions in the RMA, the provisions of the RMA shall take precedence. Capitalized terms found in this Task Order 1, and not defined herein, shall have the meaning assigned to such terms in the RMA.

Section 6. Expenses and Reimbursement.

Actual out-of-pocket expenses for travel and participation in on-site meetings are in addition to the compensation outlined in Sections 1, 2 and 4 of this Task Order 1. Travel costs such as airfare, hotel, ground transportation, per diem or meals (hereinafter, "Expenses") will be billed in the amount incurred by TEA for actual out-of-pocket cost, without any additional mark-up by TEA. Any Expenses incurred shall be billed for the month in which the Expenses are incurred. Air travel will be purchased at coach class fares, with advance purchase discounted tickets used when scheduling permits. Expense reports detailing all Expenses, along with receipts, will be presented to SBCCA for reimbursement.

Section 7. Payment Terms.

Section 7.1 Billing and Payment.

TEA billable hours will be tracked and itemized for each month for TEA services performed under Task Order 1. TEA will submit to SBCCA an invoice for such hours, plus Expenses, if any, on a monthly basis (the "Invoice"). Except as provided in Section 4 (deferred fees) of this Task Order 1 or otherwise agreed to by the Parties, SBCCA shall pay each Invoice for services provided by TEA under this Task Order 1 within thirty (30) days from the receipt of each Invoice, and will send payment either via electronic funds transfer or mail payment to:

The Energy Authority, Inc.
301 W. Bay Street, Suite 2600
Jacksonville, Florida 32202
Attention: Daina Dean
Email: ddean@teainc.org

Section 7.2 SBCCA Failure to Pay.

SBCCA’s failure to make timely payments of undisputed amounts to TEA due under Task Order 1 shall be considered a breach. In the event such breach is not cured within ten (10) days following written notice by TEA, then SBCCA shall be in default (an “Event of Default”). Upon the occurrence of an Event of Default, TEA may, without prejudice to any other remedies:

- (a) Apply any payments received by TEA for the benefit of SBCCA from any third party, towards the outstanding amount owed to TEA.
- (b) Apply any monies from security posted by SBCCA in the Reserve Account (as defined in Task Order 2), if any, towards the outstanding amount owed to TEA;
- (c) Defer collection or provide an extension of outstanding amounts owed to TEA; and/or
- (d) Terminate this Task Order 1 and all services provided for herein pursuant to the process outlined in RMA Section 25.2.

Section 7.3 Late Payments.

Any payment that is not received (exclusive of deferred Phase 1 Fees and Phase II Fees) by TEA on or before the date required shall incur a monthly late fee, which shall be the total undisputed outstanding balance due multiplied by the 1.5% per month, or as allowable by state law (the “Late Fee”).

Section 8. Billing Rates.

The TEA 2017 Billing Rates are applicable to any work performed by TEA in calendar year 2017 for which TEA is compensated on the basis of actual hours worked by TEA staff. Billing Rates are subject to annual adjustment and modification by TEA, and TEA agrees to provide SBCCA with written notice of any such revisions.

TEA 2017 Billing Rates

TEA 2017 Billing Rates⁽¹⁾	
Job Group	Billing Rate \$/hour
Principal Consultant	\$300
Senior Consultant/Project Manager	\$255
Consultant	\$190
Analyst	\$150
Clerical	\$95

⁽¹⁾Billing rates are subject to change after December 31, 2017.

From time to time, SBCCA may request, and TEA may provide SBCCA with, additional services not described herein, and specifically described in a separate scope of work agreed to in writing by SBCCA and TEA.

Section 9. Functions Performed by SBCCA.

Unless otherwise mutually agreed to by the Parties, activities not expressly provided for herein are considered not within the scope of services for Task Order 1 and shall be performed by SBCCA or other third party, unless otherwise addressed in a separate Task Order.

Section 10. Amendment.

This Task Order 1 may be amended by an instrument in writing signed by each Party's authorized representative.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Task Order 1 to be executed in their respective names by their respective duly authorized representatives as of the date written in the first paragraph of this Task Order 1.

THE CITY OF SOLANA BEACH d/b/a SOLANA BEACH CCA

THE ENERGY AUTHORITY, INC.

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: Joanie C. Teofilo
Its: President and CEO
Date: _____

ATTEST:
By: _____
Name: _____
Its: _____
Date: _____

Task Order 2 for Phase III Core Services

TEA and SBCCA agree that the following terms and conditions constitute Task Order 2 for Phase III Core Services (“Task Order 2”).

Section 1 Scope of Services for Phase III (Program Operations).

During Phase III, TEA shall provide to SBCCA certain program operation services (hereinafter, the “Operational Services” or “Program Operations”) as more particularly described herein. For purposes of this Task Order 2, the Operational Services provided by TEA are separated into and described in Section 1.1 (Power Purchases and Policies), Section 1.2 (Program Administration and Compliance), Section 1.3 (Integrated Resource Plan) and Section 1.4 (Support Tasks).

Section 1.1 Power Purchases and Policies.

1.1.1 Power Purchases.

(1) Subject to Resource Management Agreement (“RMA”) Section 6.6, TEA shall provide trading services on behalf of SBCCA with TEA acting as principal in Transactions utilizing trading agreements between TEA and its counterparties, with such trading services including but not limited to, transacting as principal in the Transaction with third parties or with CAISO. “Transactions” means the purchase and sale of electricity products, including energy, resource adequacy capacity, ancillary services and renewable energy credits. Except as otherwise agreed by the Parties, SBCCA will transact with TEA for all of its wholesale power requirements. After SBCCA has met the conditions set forth in Section 1.1.1(2), then SBCCA, at its sole option, may enter into Transactions with third-party energy suppliers, including specific generators with local renewable generation located in San Diego County, which the Parties agree will be procured directly by SBCCA (hereinafter, “Direct SBCCA Counterparties”).

(2) SBCCA agrees that as long as TEA is providing trading services, as principal, SBCCA will not (i) execute a Transaction with another PPA Provider, or (ii) grant a security interest, other than to TEA, in the Lock Box or Reserve Account. To the extent that SBCCA would like TEA’s trading relationship with counterparties for Transactions made on SBCCA’s behalf to change from principal to agent, thereby utilizing trading agreements between SBCCA and its Direct SBCCA Counterparties, SBCCA may provide notice to TEA (the “Trading Notice”) that will be effective the first day of January of the subsequent calendar year (the “Notice Effective Date”). SBCCA agrees that (i) the Notice Effective Date will not be less than 36 months after the Power Start Date, and (ii) such Trading Notice must be provided no later than the first day of September in any calendar year. SBCCA agrees that effecting a change from TEA trading as principal to TEA trading as agent under Transactions made on CCA’s behalf, does not release SBCCA from its obligations to TEA resulting from obligations incurred by TEA under Transactions made while trading as principal. The Parties agree to cooperate to facilitate communications with the relevant counterparties with respect to TEA’s change from principal to agent for SBCCA Transactions.

1.1.2 Policies and Guidelines.

TEA will work with SBCCA to establish prudent power procurement policies, risk management policies, credit policies, and long-term hedging guidelines. SBCCA policies will include the following:

- Minimum and maximum hedge volumes by tenor which are dependent on expected headroom and opt-out rates;
- Maximum hedge tenor;
- Credit exposure metrics with policies to remediate exposure when necessary;
- Minimum financial reserve targets held by SBCCA once operations commence and traditional commercial bank credit facilities become available; and
- Other policies as deemed appropriate through discussions between the Parties.

Section 1.2 Program Administration and Compliance.

1.2.1 Regulatory and Legal Compliance.

TEA will coordinate with Calpine and SBCCA to provide the following:

- Relevant regulatory and legislative monitoring as it affects CCAs in California;
- Monthly and annual Resource Adequacy (“RA”) showings to the California Public Utility Commission (“CPUC”); and
- Monthly and annual load forecasts to the CPUC and/or California Energy Commission (“CEC”).

In addition, TEA will coordinate with Calpine and SBCCA to prepare and submit compliance filings to the appropriate regulatory bodies as follows:

- Annual Renewable Portfolio Standard (“RPS”) Progress Reports and RPS Procurement Plans;
- Additional CPUC reporting including Annual EPS Attestation and Annual SSP filing;
- Additional CEC reporting including Historical load, Year-Ahead load forecasts, Integrated Energy Policy Report (“IEPR”) as applicable, routine quarterly reporting and annual power mix report;
- Greenhouse Gas (“GHG”) Annual Summary;
- Storage Biennial Progress Report; and
- Re-certification of CCA Implementation Plan, as needed.

TEA will monitor regulatory and compliance obligations and requirements associated with operating in the CAISO market. This effort includes performing a cross audit of supplier RA plans on a monthly basis. As Scheduling Coordinator, as defined by CAISO (“SC”), TEA will collect all RA Supply Plans from the market and will work with SBCCA to resolve any inconsistencies disputes in the RA showings with the supplier, CAISO and/or CPUC, as needed. This process is repeated monthly. As the SC, TEA will also perform the same cross audit function for the annual RA plan. The Parties recognize that the regulatory and legal compliance tasks outlined in this Section 1.2.1 will require the collective efforts of the TEA, Calpine and SBCCA.

1.2.2 Policy and Program Development.

TEA will work with SBCCA and Calpine to design and expand programs appropriate for the customer base and load profile for SBCCA customers. These programs will build on SBCCA’s existing offering, and may include local renewable energy procurement, demand response, energy efficiency, energy storage, and other financially sound energy-related programs.

1.2.3 Ongoing Communications and Outreach to CCA Customers.

During the term of this Task Order 2, TEA will support efforts by SBCCA and Calpine to develop promotional outreach materials and expand SBCCA service to new communities by providing requested SBCCA data and information in the possession of TEA regarding energy services.

1.2.4 Accounting Services.

During the term of this Task Order 2, TEA will support SBCCA and Calpine by providing requested SBCCA data and information in the possession of TEA necessary for financial accounting, settlement, SBCCA audits, or to support ongoing SBCCA operations.

1.2.5 Wholesale Power Procurement Operations.

TEA will be the SC in the CAISO market and will provide a comprehensive suite of SC and related services to fulfill the requirements of a SC. TEA will conduct the following activities while performing its duties and responsibilities as SC on SBCCA's behalf:

- **Maintain credit facilities with CAISO.** Subject to Section 2.0 contained herein, TEA will maintain credit with the CAISO sufficient to make payments to, and receive payments from, the CAISO on SBCCA's behalf.
- **Provide daily forecast of SBCCA hourly loads.** Each business day, TEA will generate an hourly forecast of loads for the next 7 days for SBCCA.
- **Submit demand bids to Day Ahead ("DA") market.** TEA will submit Demand Bids to the CAISO Day Ahead Market to meet SBCCA's forecasted load requirements. TEA will monitor and compare Demand Bid information resident in the CAISO portal with submitted information and use commercially reasonable efforts to validate Day Ahead Market data submissions.
- **Submit supply bids to DA market (both economic and self-schedule).** To the extent that TEA enters into agreements on behalf of SBCCA, or SBCCA directly enters into agreements with Direct SBCCA Counterparties, TEA will provide the scheduling and settlement activities required to schedule SBCCA's supply agreements with CAISO. For any supply agreements linked to a specific generation source, SBCCA will require its counterparty to provide TEA with a forecast of expected hourly generation levels that TEA will use in submitting day-ahead supply offers to CAISO.
- **Register and maintain Commercial Model and Resource Adequacy ("RA").** TEA shall assist SBCCA in identifying SBCCA's information required to register and maintain SBCCA's assets, if any, in the CAISO commercial model. TEA shall assist SBCCA in identifying SBCCA's information required to comply with CAISO's resource adequacy requirements in accordance with Section 40 of the Tariff.
- **Settlement validation and allocation of costs.** TEA shall use reasonable efforts to validate CAISO invoices. Should TEA and SBCCA elect to dispute a CAISO invoice amount, TEA will file a dispute with CAISO pursuant to the CAISO tariff. Once a dispute determination has been made by CAISO, further appeals or action from TEA on SBCCA's behalf would be provided as requested and paid for by SBCCA on a time and materials basis using the billing rates provided in Section 8 herein.
- **Congestion Revenue Rights ("CRR") bid strategy development and implementation.** TEA will manage the annual CRR nomination and allocation process on behalf of SBCCA. Annually, TEA will provide SBCCA with an estimate of the dollar value of the potential CRRs based upon historic and forecasted Locational Marginal Prices for the source and sink pricing nodes

associated with the applicable source and load pricing nodes, and TEA will consult with SBCCA to select the CRRs to nominate. Selection of any CRRs to nominate will be at SBCCA's sole discretion. TEA will nominate any CRRs selected by SBCCA and TEA will notify SBCCA of the CRRs awarded to TEA for SBCCA's account. TEA will review the settlement statements and invoices associated with the CRRs for accuracy.

- **CAISO Market Monitoring.** TEA will monitor the following CAISO committees and participate (in person or via phone) in the committee meetings and provide a summary to SBCCA of any discussion items that it reasonably believes may impact SBCCA's planned operations.
 - Market Surveillance
 - Audit
- **Perform Additional Tasks.** In addition to the above, TEA will provide the following, as needed:
 - Import schedule, as required, including preparing e-tags.
 - Coordinating with generation operators to forecast generation.
 - Coordination of unit outages with generation operators and CAISO.
 - IST for system power transactions.

1.2.6 Long-term Power Procurement.

Consistent with SBCCA's renewable and GHG goals, its Integrated Resource Plan and hedging strategies developed pursuant to this Task Order 2, TEA will assist with issuing RFPs for power supplies, as well as assist with evaluating bids and assist with negotiating power purchase agreements.

1.2.7 Financial Planning.

TEA will develop and maintain a financial Pro Forma model of SBCCA's income and cash flows that will form the basis for a variety of applications including, but not limited to, annual budgeting and financial planning, ongoing risk analysis (both retail rate competitiveness and wholesale market risks), as well as form the basis for establishing SBCCA's annual revenue requirement. TEA anticipates that the rate design modules developed under Task Order 1 will be integrated with this financial planning model. TEA will include the following:

- **Financial Model:** Using the Pro Forma model developed during Phase I, TEA will build a financial model of SBCCA's financial projections which typically include load, resources with associated costs, market prices, various fixed costs and CAISO fees, executed short-term market Transactions and any other variables, as necessary, to inform a complete cost picture for SBCCA. TEA will coordinate with SBCCA staff on all necessary inputs required to derive an accurate financial projection. SBCCA will have on-demand access to the most recent financial model runs through a web portal.
- **Risk Model:** TEA has developed a modeling framework that will be applied to its risk analysis for SBCCA. The risk model generates scenarios by using inputs for several variables that may include market implied heat rates, natural gas prices, power prices, load variables, and other relevant inputs.

The risk model will be used as an important component to the entire risk management function, including calculating potential variability in SBCCA's cash flows. This information will be used in

assessing the need for short-term hedging Transactions, establishing adequate financial reserve funds, determining funding available for CCA programs and for setting retail rates.

- **Monthly Risk Reports:** TEA will create monthly risk reports that will measure SBCCA financial performance and potential uncertainty therein. These reports will then inform discussions with SBCCA as part of the continual risk management process.

1.2.8 Undertaking Continual Risk Management.

TEA will assist SBCCA in establishing a formal framework for performing continual risk management that will be memorialized through a SBCCA-approved risk management policy and procedures document. TEA will also assist SBCCA in drafting risk reporting requirements. TEA will be available on a quarterly basis for a meeting with SBCCA during which time CCA-related risks are reviewed, discussed, and as appropriate, risk mitigation strategies are reviewed and approved by SBCCA. The quarterly meetings will include the appropriate SBCCA staff and TEA staff. TEA will compile all risk-related information available into a single document or presentation that can be reviewed and discussed at the quarterly meeting. Upon approval by SBCCA, the results of the quarterly meeting will serve as the approved strategy guide for TEA market activities on behalf of SBCCA for the prompt quarter. This agreed upon strategy will be prepared consistent with reliability requirements, SBCCA renewable and GHG goals, financial goals and risk policies and procedures. The strategy will incorporate TEA's current market outlook and discussion of expected SBCCA loads and resources. The Parties agree no strategy will be adopted which violates the risk policies of SBCCA or TEA.

Section 1.3 Integrated Resource Plan.

1.3.1 Development of IRP.

TEA will prepare for SBCCA an Integrated Resource Plan ("IRP"), and update as necessary, consistent with the requirements of the Clean Energy and Pollution Reduction Act of 2015 ("SB350"), which requires a CCA to adopt an IRP and a process for updating the plan at least once every five years to ensure, among other things, that each CPUC jurisdictional load-serving entity (including CCAs) meet the state's greenhouse gas emission reduction targets and procures resources to meet the 50% RPS by 2030 target. TEA's services will include working with SBCCA to submit the IRP to the CEC and correct any deficiencies identified by the CEC.

TEA anticipates that the tasks completed in developing an IRP will include the following:

- TEA will develop a load forecast of SBCCA's load that extends to a 10-year study period. Included in this load forecast will be an analysis of the impacts of demand-side resource management including energy efficiency, distributed generation, and demand response.
- TEA will create a model of SBCCA's long-term financial function analyzing a 10-year study period. The financial model will characterize the economics of SBCCA's existing portfolio on a monthly and annual granularity along with monthly diurnal load or resource balance. The model will include data necessary to determine financial performance metrics that are commonly used and understood by SBCCA management.
- TEA will collect economic data from a variety of renewable and other generating resources that SBCCA desires to consider adding to its generation portfolio. TEA will also include local resource options that SBCCA may wish to consider or acquire. Utilizing a levelized lifecycle-cost of energy methodology, TEA will aggregate resource, regulatory, and market assumptions to model projected SBCCA resource costs.

- TEA will analyze forecasted market conditions and consider known uncertainties, such as carbon pricing and amending state renewable portfolio standards that may affect resource planning decisions. This information will be used to determine the quantity of wind, solar, energy storage, other renewable and/or gas generation capacity that likely will be added or retired in the California and broader western regional market over the study period.
- Based on the above analysis TEA will project portfolio options for SBCCA that include cost and a discussion of the relative risk of each respective option. TEA will work with SBCCA to recommend portfolios that strive to achieve minimal levels of risk relative to cost, consistent with SBCCA's renewable portfolio and GHG goals.
- TEA staff will work with SBCCA to identify the main areas of strategic focus and ultimate goals for the use of this IRP that may extend beyond the minimum requirements of SB350.

1.3.2 IRP Findings and Presentation.

Upon request of SBCCA, TEA will arrange for a presentation of the IRP findings and recommendations to the SBCCA executive management team. If SBCCA requests such a presentation, TEA will summarize the report in a presentation format containing the key components of the IRP, including study objectives, key assumptions, study approach, findings, and final recommendations.

Section 1.4 Additional Phase III Support Tasks.

TEA will provide additional Phase III tasks to include the following:

- Continue to coordinate and refine, with SBCCA and Calpine, a project timeline and detailed project plan for CCA operations.
- Continue to assist SBCCA and Calpine with community outreach; and participate in City Council and other community meetings, as necessary.
- Continue weekly calls and/or WebEx meetings with SBCCA and Calpine, as necessary, to ensure all TEA tasks are assigned and major milestones are being met.
- Continue to assist SBCCA with ongoing regulatory functions.
- TEA will provide assistance with negotiations and contracting with existing or new local generation facilities, including Direct SBCCA Counterparties, which SBCCA may elect to pursue.
- Continue to assist SBCCA with evaluating the factors involved in rate setting and rate policy making.

Section 2. Credit Solution.

Subject to the requirements described in Section 2 herein, TEA will, during the Term of this Task Order 2, use its existing credit facilities to provide credit support for Transactions made by TEA, on behalf of SBCCA, with wholesale market participants and CAISO. As more particularly described herein, such credit solution shall include the following: (i) the initial short-term cost of obtaining electricity and related attributes, (ii) required security for participation in CAISO, (iii) Deferred Fees (as defined herein), (iv) TEA satisfying requests for credit support from counterparties with respect to Transactions made by TEA as principal (collectively, the "Credit Solution"). Notwithstanding the foregoing, the Parties agree that TEA is not required to provide credit support for any Transaction in which TEA is acting as agent (i.e. not as principal) on behalf of SBCCA. This Credit Solution is subject to SBCCA meeting certain obligations, and establishing certain accounts and funding, as more particularly described in Sections 2.1, 2.2, and 2.3, contained herein.

Section 2.1 Lock-Box Pledge Account.

Providing the Credit Solution is subject to the following Lock-Box Account requirements and SBCCA obligations:

(1) SBCCA hereby grants a present and continuing first priority security interest in and lien upon the funds and payments made by SBCCA customers to SDG&E (the "Customer Payments"), which are subsequently deposited by SDG&E into the lock box pledge account (the "Lock Box Account") as funding for ongoing energy purchases made by TEA on behalf of SBCCA. Prior to TEA entering into Transactions on SBCCA's behalf, SBCCA shall execute and deliver a deposit account control agreement, substantially in the form attached hereto as Exhibit "A" (the "Control Agreement"), and other agreements as may be required. SBCCA shall direct SDG&E to deposit all Customer Payments only into the Lock Box Account. The Lock Box Account shall be held at a commercial bank regulated by the Federal Deposit Insurance Corporation ("FDIC") and the Office of the Comptroller of the Currency ("OCC"), meeting the following requirements: (i) the bank's lowest long-term deposit rating among Standard & Poor's, Moody's, and Fitch Rating Services must be at least an "A" or "A2" as applicable, (ii) the bank shall have assets of at least \$5 billion, and (iii) the bank shall be a U.S. bank willing to issue standby letters of credit (the "SBCCA Bank").

(2) SBCCA agrees that the Customer Payments deposited in the Lock Box Account shall be distributed monthly, as follows:

- (a) First, to TEA for billed power purchases and charges from CAISO related to CAISO Transaction, including outstanding prior month activity and current month estimated Transactions ("CAISO Power Payments").
- (b) Second, to TEA and participating Direct SBCCA Counterparties, if any, for billed power purchase for monthly Bilateral Transactions ("Bilateral Power Payments"). SBCCA shall not make any pre-payments to any third party prior to making CAISO or Bilateral Power Payments;
- (c) Third, the Operational Fees and Deferred Fees, if any;
- (d) Fourth, to be retained in the Lock Box Account until a balance of \$200,000 dollars (the "Operating Funding") has been established as outlined in Schedule A;
- (e) Fifth, monthly SBCCA administrative overhead¹ (based on annual budgeted amounts related to SBCCA activities) and other amounts owed to TEA under Section 4.14;

¹ The Parties agree that beginning with the thirteenth month after the Power Start Date, administrative overhead will be budgeted at (i) up to \$16,000 per month ("Administrative Costs") for on-going SBCCA administrative costs, and in addition (ii) SBCCA may reimburse the City of Solana Beach for consulting costs related to the start-up of the CCA in an amount not to exceed \$6,000 per month ("Reimbursement Costs") for months 13 through 24. After the first 24 months, the Parties will determine a reasonable budget for administrative costs which align with the SBCCA goals on an annual basis.

- (f) Sixth, to be deposited into the Reserve Account (defined below) until the Reserve Requirement (defined below) is met;
- (g) Seventh, to SBCCA, provided that all SBCCA obligations under Section 2.1(2)(a) through (g) are paid current, free and clear of any lien established or authorized by this Agreement.

(3) SBCCA shall be required to maintain the Operating Funding during the Initial Term, and thereafter only if TEA continues to provide a Credit Solution. The Parties agree that the Operating Funding shall be provided solely from the Customer Payments and SBCCA shall not be obligated to deposit additional funds to establish, maintain or restore the Operating Funding amount from any other City or taxpayer source. SBCCA shall authorize the SBCCA Bank to provide TEA with the continuous ability to view the activity and balance of the Lock Box Account.

Section 2.2 Reserve Account.

Providing the Credit Solution is subject to the following Reserve Account requirements and SBCCA obligations:

(1) SBCCA hereby grants a present and continuing first priority security interest in and lien upon (including the right of setoff against) the funds which will be deposited by SBCCA in a reserve account (the "Reserve Account") as security for Transactions made by TEA as a principal on behalf of SBCCA. Prior to TEA entering into such Transactions, SBCCA shall execute and deliver a deposit account control agreement, substantially in the form attached hereto as Exhibit "B" (the "Reserve Control Agreement"). The Reserve Account shall be held at the SBCCA Bank. The Reserve Account shall be used (i) to support counterparty or CAISO requests to TEA for collateral for the Transactions entered into by TEA for SBCCA's behalf, (ii) for reimbursement in the event of a SBCCA default under the RMA, (iii) in the event the Lock Box Account is not sufficiently funded to pay for monthly Transactions; or (iv) for other purpose as mutually agreed by the Parties in writing. SBCCA shall authorize the SBCCA Bank to provide TEA with the continuous ability to view the activity and balance of the Reserve Account.

(2) During the first twelve months of power procurement by TEA, SBCCA will deposit excess Customer Payments from the Lock Box Account, in accordance with the waterfall provisions of Section 2.1(2), into the Reserve Account (as required in Schedule "A") until the balance is equal to the aggregate reserve requirement (the "Reserve Requirement"). The initial amount of the Reserve Requirement is \$550,000 dollars, which is targeted to be achieved by the end of the first twelve months of power deliveries.

(3) After the first twelve months of power deliveries, the Reserve Account will continue to serve as credit support for Transactions entered into on behalf of SBCCA by TEA. SBCCA shall fund and maintain the Reserve Requirement to be no less than the Credit Exposure (as defined below) calculated by TEA.

(4) From time to time, but no more frequently than once per month, on its own initiative, or at the reasonable request of SBCCA (each, a "Calculation Date"), TEA will recalculate SBCCA's Credit Exposure. "Credit Exposure" means the sum of the following:

- (a) the aggregate of all amounts in respect of such Transactions that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to TEA and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to SBCCA and that remain unpaid as of such Calculation Date; plus
- (b) the Current Mark-to-Market Value of all outstanding Transactions to TEA.

As used above, (i) "Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a party would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction and (ii) "Settlement Amount" means, with respect to a Transaction and the non-defaulting party, the losses or gains, and costs, expressed in U.S. Dollars, which such party would incur as a result of the liquidation of such Transaction.

(5) Following a Calculation Date, either party may request an adjustment to the Reserve Requirement, subject to the limitation that total Reserve Requirement shall not exceed the lesser of (i) the sum of the Credit Exposure plus twenty percent (20%) of the notional value of all outstanding Transactions, or (ii) the 95th percentile value of potential future exposure for all outstanding Transactions (as calculated by TEA in a commercially reasonable manner). The Parties agree that the Reserve Requirement shall be provided solely from available Customer Payments, to the extent such are available, and SBCCA is not required to deposit additional funds to establish, maintain, increase or restore the Reserve Requirement from any other City or taxpayer source. In any month which the total in the Reserve Account is less than the Reserve Requirement due to a change in the credit exposure (a "Shortage"), then SBCCA shall make-up such shortfall with Customer Payments in the month or months immediately following such Shortage in accordance with the waterfall provisions of Section 2.1(2).

Section 2.3 CAISO Market Participation.

Pursuant to the requirements of CAISO, new market participants which do not meet the CAISO minimum capitalization requirements of \$1 million tangible net worth or \$10 million total assets (the "MCR"), are required to deposit up to \$500,000 of financial security (the "Security Deposit") with CAISO. As part of the Credit Solution, TEA will provide such Security Deposit on a temporary basis, beginning on or after the Phase III Commencement Date, and until SBCCA meets CAISO's MCR to obtain release of the Security Deposit held by CAISO. During the term of this Task Order 2, SBCCA shall provide TEA with quarterly financial statements which indicate, *inter alia*, SBCCA's MCR. At the earliest reasonable opportunity, SBCCA shall take steps to allow CAISO to release the Security Deposit. Upon return by CAISO of any or all Security Deposit, including accrued interest paid by CAISO, if any, SBCCA will return such Security Deposit without delay to TEA for the total amount of the Security Deposit. At no time will SBCCA pledge the Security Deposit to a third party, or otherwise allow a security interest or lien to encumber or be placed on the Security Deposit. Notwithstanding the foregoing, until the Security Deposit is returned to TEA as provided herein, SBCCA hereby grants to TEA a present and continuing first-priority security interest in the Security Deposit.

Section 3. Term and Termination of Task Order 2.

Section 3.1 Term of Task Order 2.

Operational Services provided under this Task Order 2 shall commence on the date the SBCCA Implementation Plan is certified by the California Public Utilities Commission (the "Phase III Commencement Date" and shall continue until the end of the Initial Term (as defined in RMA Section 3.1). Furthermore, during the Term of Task Order 2, the Parties agree that the delivery date for power procured by TEA on behalf of SBCCA shall be a date mutually agreed upon in writing by the Parties (the "Power Start Date"). After the Initial Term, this Task Order 2 shall renew on an annual basis (each a "Renewal Term"), unless and until terminated pursuant to Section 3.2 herein.

Section 3.2 Termination.

Either Party may terminate this Task Order 2 by (i) providing notice of termination at least one hundred eighty (180) days prior to the end of any Renewal Term for termination effective on the last day of such Renewal Term, or (ii) pursuant to the terms of RMA Section 25 ("Default").

Section 4. Compensation for Services Provided in Task Order 2.

Section 4.1 Compensation for Services.

4.1.1 Operational Services.

For the Operational Services defined in Sections 1.1, 1.2, 1.3 and 1.4 of this Task Order 2, SBCCA shall pay TEA on a monthly basis the amount of Seventeen Thousand Five Hundred Eighty-Three Dollars (\$17,583.00) (the "Operational Fees"), in addition to any deferred fees owed by SBCCA for Phase I Fees or Phase II Fees.

4.1.2 Credit Solution.

For the Credit Solution (as defined in Section 2 of this Task Order 2), SBCCA shall pay TEA on a monthly basis a credit solution fee (the "Credit Solution Fee"). The Credit Solution Fee is calculated by multiplying the power procured by TEA to meet CCA load for the applicable month on a megawatt hour ("MWh") basis by the following amount per MWh, as applicable: (i) \$1.00 per MWh as long as TEA is acting as principal in SBCCA Transactions, or (ii) \$0.25 per MWh if TEA acts solely as an agent, rather than principal for SBCCA Transactions, and the Security Deposit has not been returned to TEA or Deferred Fees are still outstanding. The Credit Solution Fees, if any, are in addition to any amounts owed under Section 4.1.1 contained herein. Collectively, the Operational Fees and Credit Solution Fees shall be referred to as "Phase III Fees."

4.1.3 Deferred Phase I Fees and Deferred Phase II Fees.

For the Deferred Phase I Fees and Deferred Phase II Fees, as described in Task Order 1, SBCCA shall pay TEA an amount which shall be amortized for payment in equal monthly amounts during the first forty-six (46) months beginning sixty (60) days after the Power Start Date, which is estimated to equal Six Thousand Seven Hundred Dollars (\$6,700.00) (the "Deferred Fees") per month for those Phase I and Phase II Services incurred by TEA. The Deferred Fees are in addition to any amounts owed under Section 4.1.1 or Section 4.1.2 contained herein.

4.1.4 Hourly Rate.

For additional services not provided for in this Task Order 2 and requested by SBCCA, SBCCA shall pay TEA on a time and materials basis using the hourly billing rates provided in Section 8 contained herein.

4.1.5 SBCCA Power Obligations.

SBCCA obligations to pay TEA for power procurement on behalf of SBCCA (“Power Obligations”) are separate from any fees owed to TEA for TEA Services. During the term of the RMA and this Task Order 2, compensation and fees owed to TEA, excluding the (i) Deferred Phase I Fees, (ii) Deferred Phase II Fees, and (iii) Power Obligations, will be adjusted on an annual basis by the greater of (i) 3% or (ii) the U.S. Government Consumer Price Index for All Urban Consumers (the “CPI-U”) beginning on the second anniversary of the RMA Effective Date.

Section 5. Controlling Terms and Conditions.

The provisions of this Task Order 2 are subject to the Terms and Conditions of the RMA between the Parties. If any provisions of this Task Order 2 conflict with any provisions in the RMA, the provisions of the RMA shall take precedence. Capitalized terms found in this Task Order 2, and not defined herein, shall have the meaning assigned to such terms in the RMA.

Section 6. Expenses and Reimbursement.

Actual out-of-pocket expenses for travel and participation in on-site meetings are in addition to the compensation outlined in Sections 1 and 4 of this Task Order 2. Travel costs such as airfare, hotel, ground transportation, per diem or meals (hereinafter, “Expenses”) will be billed in the amount incurred by TEA for actual out-of-pocket cost, without any additional mark-up by TEA. Any Expenses incurred shall be billed for the month in which the Expenses are incurred. Air travel will be purchased at coach class fares, with advance purchase discounted tickets used when scheduling permits. Expense reports detailing all Expenses, along with receipts, will be presented to SBCCA for reimbursement.

Section 7. Settlement, Billing, and Payment Terms.

Section 7.1 CAISO Settlement, Billing, and Payments.

TEA shall provide services as Scheduling Coordinator (“SC”) representing SBCCA in CAISO. TEA shall provide SBCCA with a statement of CAISO settlement activities on a regular basis in coordination with CAISO’s settlement calendar (i.e., currently weekly). Additionally, each month TEA shall provide SBCCA with an aggregate or estimate of SBCCA Transactions based on available information from CAISO. For Transactions executed by TEA as principal in the Transaction for SBCCA’s account within CAISO, SBCCA shall owe TEA for the Transactions, and TEA shall make weekly payments to CAISO in a timely matter contingent upon the following:

(1) Pursuant to Section 2.1, SBCCA shall maintain sufficient funds in the Lock Box Account to allow withdrawal of funds by TEA (or payment to TEA) at least one (1) business day in advance of TEA’s weekly payment to CAISO for Transactions made on behalf of SBCCA (the “CAISO Payments”). The CAISO Payments will reflect actual weekly Transactions based on CAISO settlement invoices; and

(2) any amounts received from CAISO on behalf of SBCCA will serve as a credit to the respective CAISO Payments due by SBCCA.

Notwithstanding the foregoing, unless funds are received from SDG&E into the Lock Box Account, during the first two months of power procurement (the "Transition Period") TEA will (i) not impose a minimum Operating Funding requirement (as shown in Schedule "A"), and (ii) not require payments from the Lock Box for amounts owed for weekly CAISO Transactions made on behalf of SBCCA.

TEA shall use reasonable effort to validate CAISO invoices based on a review of actual CAISO charges. Should TEA and SBCCA elect to dispute a CAISO invoice amount, such dispute shall be in accordance with Section 1.2.5 of this Task Order 2.

Section 7.2 Direct SBCCA Counterparties.

During the Initial Term, SBCCA may request that TEA settle with one or more Direct SBCCA Counterparties pursuant to direct supply agreements between SBCCA and its Direct SBCCA Counterparties. If TEA is not precluded by market regulations, and upon either (i) pre-payment in full by SBCCA, or (ii) a comparable increase is made to the Operating Funding amount, then TEA will make timely payments to such Direct SBCCA Counterparties as agreed by the Parties for SBCCA's account.

Section 7.3 Physical Bilateral Power Transactions with TEA as Principal in the Transactions.

For Transactions executed by TEA as principal in the Transaction for SBCCA's account with counterparties other than CAISO (such non-CAISO counterparties referred to herein as "Bilateral Counterparties"), SBCCA shall owe TEA for the Transactions, and TEA shall make monthly payments to such Bilateral Counterparties, in a timely manner, contingent on the following:

(1) Pursuant to Section 2.1, after the Transition Period, SBCCA shall maintain sufficient funds in the Lock Box Account to allow payment of funds to TEA at least five (5) business days in advance of TEA's monthly payment to Bilateral Counterparties (the "Monthly Payments"), as more particularly described in Section 7.3(2) below. The Monthly Payments will be based on the monthly settlements of Transactions with Bilateral Counterparties; and

(2) On or before the 5th business day of each month, TEA will provide SBCCA with an invoice or statement of the Monthly Payments owed, including immediately preceding month's activities and settlement due related to Transactions with Bilateral Counterparties during the monthly billing period. Monthly Payments owed shall include any related penalty, interest, payments, or credits. If an amount is due SBCCA, considering all amounts owed between the Parties under this Task Order 2, then TEA will deposit the funds into the Lock Box Account. If an amount is due TEA, SBCCA will have sufficient funds available in the Lock Box Account, to allow TEA to withdraw such amounts by the 15th of each month in immediately available funds.

Notwithstanding the above provision of this Section, billing and payment provisions for these Transactions are dependent upon the market rules or contracts governing the specific transactions. If said billing and payment provisions require earlier payments than the provisions of this Section, then billing and payment shall be in accordance with the earlier payment provisions of such contracts or market rules.

Section 7.4 Other Products.

This section is reserved.

Section 7.5 Hourly Billing and Payments.

TEA billable hourly fees, if any, will be tracked and itemized for each month in which TEA services are performed under Task Order 2. TEA will bill SBCCA on a monthly basis for the amount of fees owed as Deferred Fees, Phase III Fees, or other billable hourly fees (hereinafter, "Compensation") pursuant to Section 4 of this Task Order 2, plus Expenses, if any. If timing permits, such billable amounts will be itemized on the same monthly invoice(s) related to Transactions as described in Section 7.3 herein.

Except as provided in Section 4 (with respect to deferred fees) of this Task Order 2, SBCCA shall pay each invoice for Compensation related to TEA Services under this Task Order 2 the later of thirty (30) days after receiving the invoice from TEA or the first business day of the following month. SBCCA will send payment as designated in Section 7.5, or as otherwise designated by TEA. For the first month of operations, and until funds are first received by SBCCA from SDG&E into the Lock Box Account, then TEA shall give SBCCA a grace period of an additional thirty (30) days for the payment of Compensation by SBCCA.

Section 7.6 Payment Information.

Unless otherwise provided by TEA, SBCCA will send payment either via electronic funds transfer to TEA's bank account or via U.S. mail to:

The Energy Authority, Inc.
301 W. Bay Street, Suite 2600
Jacksonville, Florida 32202
Attention: Daina Dean, Accounting

The Parties agree to cooperate to develop and supplement the procedures related to billing and payments for the orderly implementation Sections 7.1 through 7.5; provided, however, that nothing herein shall require either Party to agree to an amendment to the terms of those sections.

Section 7.7 SBCCA Failure to Pay.

SBCCA's failure to make timely payments to TEA or fund amounts required in this Task Order 2 shall be considered a breach. Pursuant to RMA Section 25.1, in the event such breach is not cured within Cure Period described in RMA Section 25.1.1(a) and (b) following written notice by TEA, then SBCCA shall be in default, defined in RMA Section 25.1 as an Event of Default. Upon the occurrence of such Event of Default, TEA may, without waiving any other remedies:

- (a) Apply any revenues or payments received by TEA for the benefit of SBCCA from any third party, if any, towards the outstanding amount owed to TEA;
- (b) Apply any monies from security, including the Reserve Account or Lock Box Account, posted by SBCCA, towards the outstanding amount owed to TEA;

- (c) Defer collection or provide an extension of outstanding amounts owed to TEA; and/or
- (d) Terminate this Task Order 2 and all services provided for herein pursuant to the process outlined in RMA Section 25.2.

Section 7.8 Late Payments.

Any payment of an undisputed amount that is not received (exclusive of deferred Phase I Fees and Phase II Fees) by TEA on or before the date required shall incur a late fee, which shall be calculated by multiplying the total undisputed outstanding balance by the lesser of (i) the Interest Rate (as described in RMA Section 11.2), or (ii) the maximum rate allowable by state law (the "Late Fee") for the number of days which the balance remains outstanding.

Section 8. Billing Rates.

The TEA 2017 Billing Rates are applicable to any work performed by TEA in calendar year 2017 for which TEA is compensated on the basis of actual hours worked by TEA staff. Billing Rates are subject to annual adjustment and modification by TEA, and TEA agrees to provide SBCCA with written notice of any such revisions.

TEA 2017 Billing Rates

TEA 2017 Billing Rates⁽¹⁾	
Job Group	Billing Rate \$/hour
Principal Consultant	\$300
Senior Consultant/Project Manager	\$255
Consultant	\$190
Analyst	\$150
Clerical	\$95
<i>⁽¹⁾Billing rates are subject to change after December 31, 2017.</i>	

From time to time, SBCCA may request, and TEA may provide SBCCA with, additional services not described herein, and specifically described in a separate scope of work agreed to in writing by SBCCA and TEA.

Section 9. Functions Performed by SBCCA.

Unless otherwise mutually agreed to by the Parties, activities not expressly provided for herein are considered not within the scope of services for Task Order 2 and shall be performed by SBCCA or other third party, unless otherwise addressed in a separate Task Order.

Section 10. Amendment.

This Task Order 2 may only be amended by an instrument in writing signed by each Party's authorized representative.

Section 11. Exhibits and Schedules.

The following documents are attached hereto and incorporated herein:

1. Schedule A – Funding and Balance Requirements
2. Exhibit A - Deposit Account Control Agreement
3. Exhibit B - Deposit Account Control Agreement (Reserve Account)

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Task Order 2 to be executed in their respective names by their respective duly authorized representatives as of the date written in the first paragraph of this Task Order 2.

THE CITY OF SOLANA BEACH d/b/a SOLANA BEACH CCA

THE ENERGY AUTHORITY, INC.

By: _____

Name: _____

Its: _____

Date: _____

By: _____

Name: Joanie C. Teofilo

Its: President and CEO

Date: _____

ATTEST:

Name:

Date: _____

Schedule "A"

	(a)	(b)	(c)	(d)
Month	Lock Box Operating Funding Target	Aggregate Lock Box Operating Minimum Balance	Monthly Minimum Reserve Account Funding Target	Aggregate Reserve Account Funding Target
1	\$0	\$0	\$0	\$0
2	\$0	\$0	\$0	\$0
3	\$100,000	\$100,000	\$0	\$0
4	\$100,000	\$200,000	\$50,000	\$50,000
5	\$0	\$200,000	\$50,000	\$100,000
6	\$0	\$200,000	\$50,000	\$150,000
7	\$0	\$200,000	\$50,000	\$200,000
8	\$0	\$200,000	\$50,000	\$250,000
9	\$0	\$200,000	\$50,000	\$300,000
10	\$0	\$200,000	\$50,000	\$450,000
11	\$0	\$200,000	\$50,000	\$500,000
12	\$0	\$200,000	\$50,000	\$550,000

Exhibit "A" to Task Order 2

DEPOSIT ACCOUNT CONTROL AGREEMENT

Date: The __ day of _____, 2017

Debtor: The City of Solana Beach
d/b/a Solana Beach CCA

Address: Attention: Greg Wade
635 S. Highway 101
Solana Beach, CA 92075

gwade@cosb.org

Fax No.: _____

Secured Party: The Energy Authority, Inc.

Address: Attention: Daren L. Anderson
301 West Bay Street, Suite 2600
Jacksonville, FL 32202

danderson@teainc.org

Fax No.: (904) 665-0228

Depository
Institution: _____

Address: Attention: _____

Fax No.: _____

1. **Definitions.** In this Agreement:

- (a) "Article 9" means Article 9 of the Uniform Commercial Code.
- (b) "Control" means control of a deposit account, as defined in Article 9.
- (c) "Debtor" means each and all of the persons or entities shown above as Debtor. All agreements of the Debtor in this Agreement are joint, several, and joint and several.

(d) "Depository Institution" means the Depository Institution shown above.

(e) "Secured Party" means the Secured Party shown above.

(f) "Security" is defined in Article 8 of the Uniform Commercial Code.

2. **Agreement of the Parties.** The Debtor, the Secured Party and the Depository Institution agree to all of the provisions in this Agreement.
3. **Security Interest.** The Debtor has given the Secured Party a first priority security interest in, and has pledged and assigned to the Secured Party, the following property (the "Collateral"):

All of the Debtor's existing and future accounts with the Depository Institution identified below, and all amendments, extensions, renewals and replacements of the accounts (all called the "Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

Account number(s) _____ with the Depository Institution, and all amendments, extensions, renewals and replacements of the account(s) (all called the "Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

The security interest, pledge and assignment are called the "Security Interest." The Debtor and the Secured Party notify the Depository Institution of the Security Interest, and the Depository Institution agrees that it has been notified of the Security Interest.

4. **Control.** Until Depository Institution receives the Secured Party's notice that the Debtor's rights in the Account are suspended (the "Shifting Control Notice"), Debtor shall have unrestricted access to and shall have the authority to draw upon all available funds from time to time on deposit in and as part of the Collateral.

Upon receipt by Depository Institution of the Shifting Control Notice, Depository Institution shall immediately cut off Debtor's access to the Collateral and cease the payment of all Debtor-authorized transactions for the withdrawal of funds from the Collateral, using whatever means to do so that Depository Institution shall deem necessary or appropriate. If the Collateral is one or more deposit accounts under Article 9, by signing this Agreement the Debtor, the Secured Party, and the Depository Institution hereby agree that, upon receipt by Depository Institution of the Shifting Control Notice, Secured Party shall have immediate Control over the Collateral, and thereby perfect the Security Interest in the Collateral by Control. Whether or not the Collateral is a deposit account under Article 9, the Depository Institution will comply with all instructions and other directions originated by the Secured Party directing disposition of the funds in Collateral without any further consent by the Debtor. This means that the Depository Institution will comply with all orders, notices, requests and other instructions of the Secured Party relating to the Collateral, including but not limited to orders, notices, requests and other instructions to withdraw or transfer

any Collateral, and to pay or transfer any Collateral to the Secured Party or any other person or entity. The Depository Institution will promptly mark its records to register the Secured Party's Security Interest in the Collateral.

5. **Rights of Debtor and Others.** Until the Depository Institution receives the Shifting Control Notice, the Depository Institution will comply with all notices, requests and other instructions from the Debtor for disposition of funds in the Account. This includes but is not limited to orders, notices, requests or instructions to withdraw or transfer any of the Collateral, and to pay or transfer any of the Collateral to the Debtor or any other person or entity, but not to redeem or terminate the Account. After the Depository Institution receives the Shifting Control Notice, the Depository Institution will comply with all notices, requests and other instructions from the Secured Party for disposition of funds in the Account. Furthermore, unless the Secured Party agrees otherwise in writing: (a) the Depository Institution will not permit the Debtor or any other person or entity except the Secured Party to withdraw or transfer any of the Collateral, and (b) the Depository Institution will not comply with any order, notice, request or other instruction from the Debtor or any other person or entity except the Secured Party relating to any of the Collateral, and (c) the Depository Institution will not pay or transfer any of the Collateral to the Debtor or any other person or entity except the Secured Party, or to any other account except the Account. At all times after the Depository Institution receives the Shifting Control Notice, unless the Secured Party agrees or until such time as the Secured Party submits written notice to the Depository Institution that Debtor may resume Control of the Collateral (the "Control Withdrawal Notice"), the Depository Institution will not honor any check or other item drawn by the Debtor on any accounts included in the Collateral or any other withdrawal or transfer by the Debtor from the any account included in the Collateral, except to the Secured Party. The form of Shifting Control Notice is attached hereto as Schedule A.

6. **Representations and Agreements.** The Debtor and the Depository Institution represent to the Secured Party, and agree that:
 - (a) Upon receipt by the Depository Institution of the Shifting Control Notice, no person or entity except the Secured Party will have Control over any of the Collateral. Neither the Debtor nor the Depository Institution has entered into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except the Secured Party (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither the Debtor nor the Depository Institution will permit any person or entity except the Secured Party to have Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither the Debtor nor the Depository Institution will enter into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account

agreement, or other acknowledgment or agreement) that gives any person or entity except the Secured Party (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Unless the Secured Party otherwise requests or agrees in writing, the Debtor is and will remain the sole account holder of the Account.

- (b) No person or entity (except the Debtor, the Secured Party, and the Depository Institution) has made a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. The Debtor and the Depository Institution will immediately notify the Secured Party if any person or entity (other than the Debtor, the Secured Party, or the Depository Institution) makes a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral.
- (c) The Depository Institution has not issued, and will not issue, any Security for any of the Collateral, and the Depository Institution has not given, and will not give, any Security for any of the Collateral to the Debtor or any other person or entity.
- (d) The Depository Institution agrees that all of the Depository Institution's existing and future security interests, pledges, assignments, liens, claims, rights or setoff and recoupment, and other right, title and interest in any of the Collateral are and will remain fully subordinate to the Security Interest. The Depository Institution will not assert or enforce any of the Depository Institution's existing or future security interests, pledges, assignments, liens, claims, rights of setoff or recoupment, or other right, title or interest in any of the Collateral. But the Depository Institution may charge the Account for the Depository Institution's standard account fees for the Account, and for any checks and other items that are deposited in the Account and returned to the Depository Institution unpaid. The Secured Party is not personally liable to the Depository Institution for any fees, return checks, or other return items.
- (e) The Depository Institution is a bank, as defined in Article 9. The State of _____ is the Depository Institution's jurisdiction for purposes of Article 9.
- (f) Debtor hereby instructs Depository Institution, and Depository Institution hereby agrees, to furnish to Secured Party statements of the Account as well as online access to enable Secured Party to monitor activity in the Account, all as customarily provided to customers of Depository Institution at the times such statements and access are normally provided to customers of Depository Institution, through the normal method of transmission, at Debtor's expense. Additionally, Debtor hereby instructs Depository Institution, and Depository Institution agrees, to make available to Secured Party and Debtor copies of all daily debit and credit

advices of the Account and any other item reasonably requested by Secured Party. If Depository Institution receives any notice of a claim of a third party in respect of the Account or legal process of any kind relating to Debtor, Depository Institution shall make a reasonable effort to give notice to Secured Party and Debtor of such legal process.

7. **Rights of Depository Institution.** The Depository Institution does not have to pay uncollected funds. The Depository institution does not have to make funds available before it is required to do so under federal law. The Depository Institution is entitled to comply with all applicable laws, regulations, rules, court orders, and other legal process.
8. **Tax Reporting.** Until the Secured Party notifies the Depository Institution to use a different name and number, the Depository Institution will make all reports relating to the Collateral to all federal, state and focal tax authorities under the name and tax identification number of the Debtor.
9. **Waiver, Changes, and Cancellation.** Nothing in this Agreement can be waived, changed, or cancelled, except by a writing executed by the Debtor, the Secured Party, and the Depository Institution, and except that this Agreement may be cancelled by a writing signed by the Secured Party and sent to the Depository Institution in which the Secured Party releases the Depository Institution from any further obligation to comply with instructions and other directions originated by the Secured Party with respect to all of the Collateral. Except under the previous sentence, nothing in this Agreement will be affected by any act or omission by any person or entity.
10. **Notices.** All notices, orders, requests, and other instructions and communications to any party under this Agreement will be delivered, mailed, emailed or faxed to such party's address [,email address] or fax number stated above, or to the other address or fax number that such party may designate in a written notice that complies with this sentence.
11. **Successors.** This Agreement binds and benefits the parties and each of heirs, representatives, successors and assigns.
12. **Specific Performance.** This Agreement may be enforced in an action for specific performance.
13. **Governing Law.** This Agreement is governed by the laws of the state specified in Section 6(e) above.
14. **Counterparts.** This Agreement may be signed in counterparts, and all counterparts together are the same Agreement. Executed as of the date first above written.

The City of Solana Beach d/b/a Solana Beach CCA
Debtor

By: _____
Title: _____

The Energy Authority, Inc.
Secured Party

By: Joanie C. Teofilo
Title: President and CEO

Depository Institution

By: _____
Title: _____

Schedule A

SHIFTING CONTROL NOTICE

To: [Depository Institution]
[Address]

Re: Depository Account Control Agreement dated _____ by and among The City of Solana Beach d/b/a Solana Beach CCA, The Energy Authority, Inc. and [Depository Institution]

Ladies and Gentlemen:

This constitutes a Shifting Control Notice as referred to in Section 5 of the above referenced agreement.

The Energy Authority, Inc.

By: _____

Date:

Exhibit "B" to Task Order 2

DEPOSIT ACCOUNT CONTROL AGREEMENT
(RESERVE ACCOUNT)

Date: The ___ day of _____, 2017

Debtor: The City of Solana Beach
d/b/a Solana Beach CCA

Address: Attention: Greg Wade
635 S. Highway 101
Solana Beach, CA 92075

gwade@cosb.org

Fax No.: _____

Secured Party: The Energy Authority, Inc.

Address: Attention: Daren L. Anderson
301 West Bay Street, Suite 2600
Jacksonville, FL 32202

danderson@teainc.org

Fax No.: (904) 665-0228

Depository Institution: _____

Address: Attention: _____

Fax No.: _____

1. **Definitions.** In this Agreement:

- (a) "Article 9" means Article 9 of the Uniform Commercial Code.
- (b) "Control" means control of a deposit account, as defined in Article 9.
- (c) "Debtor" means each and all of the persons or entities shown above as Debtor. All agreements of the Debtor in this Agreement are joint, several, and joint and several.
- (d) "Depository Institution" means the Depository Institution shown above.

- (e) "Secured Party" means the Secured Party shown above.
- (f) "Security" is defined in Article 8 of the Uniform Commercial Code.

- 2. **Agreement of the Parties.** The Debtor, the Secured Party and the Depository Institution agree to all of the provisions in this Agreement.
- 3. **Security Interest.** The Debtor has given the Secured Party a first priority security interest in, and has pledged and assigned to the Secured Party, the following property (the "Collateral"):

All of the Debtor's existing and future accounts with the Depository Institution identified below, and all amendments, extensions, renewals and replacements of the accounts (all called the "Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

Account number(s) _____ with the Depository Institution, and all amendments, extensions, renewals and replacements of the account(s) (all called the "Account"), and all existing and future amounts in the Account, and all existing and future interest and other earnings on the Account, and all proceeds.

The security interest, pledge and assignment are called the "Security Interest." The Debtor and the Secured Party notify the Depository Institution of the Security Interest, and the Depository Institution agrees that it has been notified of the Security Interest.

- 4. **Control.** Until Depository Institution receives the Secured Party's notice that the Debtor's rights in the Account are suspended (the "Shifting Control Notice"), Debtor shall have unrestricted access to and shall have the authority to draw upon all available funds from time to time on deposit in and as part of the Collateral.

Upon receipt by Depository Institution of the Shifting Control Notice, Depository Institution shall immediately cut off Debtor's access to the Collateral and cease the payment of all Debtor-authorized transactions for the withdrawal of funds from the Collateral, using whatever means to do so that Depository Institution shall deem necessary or appropriate. If the Collateral is one or more deposit accounts under Article 9, by signing this Agreement the Debtor, the Secured Party, and the Depository Institution hereby agree that, upon receipt by Depository Institution of the Shifting Control Notice, Secured Party shall have immediate Control over the Collateral, and thereby perfect the Security Interest in the Collateral by Control. Whether or not the Collateral is a deposit account under Article 9, the Depository Institution will comply with all instructions and other directions originated by the Secured Party directing disposition of the funds in Collateral without any further consent by the Debtor. This means that the Depository Institution will comply with all orders, notices, requests and other instructions of the Secured Party relating to the Collateral, including but not limited to orders, notices, requests and other instructions to withdraw or transfer

any Collateral, and to pay or transfer any Collateral to the Secured Party or any other person or entity. The Depository Institution will promptly mark its records to register the Secured Party's Security Interest in the Collateral.

5. **Rights of Debtor and Others.** Until the Depository Institution receives the Shifting Control Notice, the Depository Institution will comply with all notices, requests and other instructions from the Debtor for disposition of funds in the Account. This includes but is not limited to orders, notices, requests or instructions to withdraw or transfer any of the Collateral, and to pay or transfer any of the Collateral to the Debtor or any other person or entity, but not to redeem or terminate the Account. After the Depository Institution receives the Shifting Control Notice, the Depository Institution will comply with all notices, requests and other instructions from the Secured Party for disposition of funds in the Account. Furthermore, unless the Secured Party agrees otherwise in writing: (a) the Depository Institution will not permit the Debtor or any other person or entity except the Secured Party to withdraw or transfer any of the Collateral, and (b) the Depository Institution will not comply with any order, notice, request or other instruction from the Debtor or any other person or entity except the Secured Party relating to any of the Collateral, and (c) the Depository Institution will not pay or transfer any of the Collateral to the Debtor or any other person or entity except the Secured Party, or to any other account except the Account. At all times after the Depository Institution receives the Shifting Control Notice, unless the Secured Party agrees or until such time as the Secured Party submits written notice to the Depository Institution that Debtor may resume Control of the Collateral (the "Control Withdrawal Notice"), the Depository Institution will not honor any check or other item drawn by the Debtor on any accounts included in the Collateral or any other withdrawal or transfer by the Debtor from the any account included in the Collateral, except to the Secured Party. The form of Shifting Control Notice is attached hereto as Schedule A.
6. **Representations and Agreements.** The Debtor and the Depository Institution represent to the Secured Party, and agree that:
 - (a) Upon receipt by the Depository Institution of the Shifting Control Notice, no person or entity except the Secured Party will have Control over any of the Collateral. Neither the Debtor nor the Depository Institution has entered into any acknowledgment or agreement (including but not limited to any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except the Secured Party (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither the Debtor nor the Depository Institution will permit any person or entity except the Secured Party to have Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Neither the Debtor nor the Depository Institution will enter into any acknowledgment or agreement (including but not limited to

any control agreement, pledged account agreement, blocked account agreement, or other acknowledgment or agreement) that gives any person or entity except the Secured Party (or acknowledges) Control over any of the Collateral or any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. Unless the Secured Party otherwise requests or agrees in writing, the Debtor is and will remain the sole account holder of the Account.

- (b) No person or entity (except the Debtor, the Secured Party, and the Depository Institution) has made a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral. The Debtor and the Depository Institution will immediately notify the Secured Party if any person or entity (other than the Debtor, the Secured Party, or the Depository Institution) makes a claim against any of the Collateral, or claims any security interest, pledge, assignment, other interest, lien or other right or title in any of the Collateral.
- (c) The Depository Institution has not issued, and will not issue, any Security for any of the Collateral, and the Depository Institution has not given, and will not give, any Security for any of the Collateral to the Debtor or any other person or entity.
- (d) The Depository Institution agrees that all of the Depository Institution's existing and future security interests, pledges, assignments, liens, claims, rights or setoff and recoupment, and other right, title and interest in any of the Collateral are and will remain fully subordinate to the Security Interest. The Depository Institution will not assert or enforce any of the Depository Institution's existing or future security interests, pledges, assignments, liens, claims, rights of setoff or recoupment, or other right, title or interest in any of the Collateral. But the Depository Institution may charge the Account for the Depository Institution's standard account fees for the Account, and for any checks and other items that are deposited in the Account and returned to the Depository Institution unpaid. The Secured Party is not personally liable to the Depository Institution for any fees, return checks, or other return items.
- (e) The Depository Institution is a bank, as defined in Article 9. The State of _____ is the Depository Institution's jurisdiction for purposes of Article 9.
- (f) Debtor hereby instructs Depository Institution, and Depository Institution hereby agrees, to furnish to Secured Party statements of the Account as well as online access to enable Secured Party to monitor activity in the Account, all as customarily provided to customers of Depository Institution at the times such statements and access are normally provided to customers of Depository Institution, through the normal method of

transmission, at Debtor's expense. Additionally, Debtor hereby instructs Depository Institution, and Depository Institution agrees, to make available to Secured Party and Debtor copies of all daily debit and credit advices of the Account and any other item reasonably requested by Secured Party. If Depository Institution receives any notice of a claim of a third party in respect of the Account or legal process of any kind relating to Debtor, Depository Institution shall make a reasonable effort to give notice to Secured Party and Debtor of such legal process.

7. **Rights of Depository Institution.** The Depository Institution does not have to pay uncollected funds. The Depository institution does not have to make funds available before it is required to do so under federal law. The Depository Institution is entitled to comply with all applicable laws, regulations, rules, court orders, and other legal process.
8. **Tax Reporting.** Until the Secured Party notifies the Depository Institution to use a different name and number, the Depository Institution will make all reports relating to the Collateral to all federal, state and focal tax authorities under the name and tax identification number of the Debtor.
9. **Waiver, Changes, and Cancellation.** Nothing in this Agreement can be waived, changed, or cancelled, except by a writing executed by the Debtor, the Secured Party, and the Depository Institution, and except that this Agreement may be cancelled by a writing signed by the Secured Party and sent to the Depository Institution in which the Secured Party releases the Depository Institution from any further obligation to comply with instructions and other directions originated by the Secured Party with respect to all of the Collateral. Except under the previous sentence, nothing in this Agreement will be affected by any act or omission by any person or entity.
10. **Notices.** All notices, orders, requests, and other instructions and communications to any party under this Agreement will be delivered, mailed, emailed or faxed to such party's address [email address] or fax number stated above, or to the other address or fax number that such party may designate in a written notice that complies with this sentence.
11. **Successors.** This Agreement binds and benefits the parties and each of heirs, representatives, successors and assigns.
12. **Specific Performance.** This Agreement may be enforced in an action for specific performance.
13. **Governing Law.** This Agreement is governed by the laws of the state specified in Section 6(e) above.
14. **Counterparts.** This Agreement may be signed in counterparts, and all counterparts together are the same Agreement. Executed as of the date first above written.

The City of Solana Beach d/b/a Solana Beach CCA
Debtor

By: _____
Title: _____

The Energy Authority, Inc.
Secured Party

By: Joanie C. Teofilo
Title: President and CEO

Depository Institution

By: _____
Title: _____

Schedule A

SHIFTING CONTROL NOTICE

To: [Depository Institution]
[Address]

Re: Depository Account Control Agreement dated _____ by and among The City of Solana Beach d/b/a Solana Beach CCA, The Energy Authority, Inc. and [Depository Institution]

Ladies and Gentlemen:

This constitutes a Shifting Control Notice as referred to in Section 5 of the above referenced agreement.

The Energy Authority, Inc.

By: _____

MASTER PROFESSIONAL SERVICES AGREEMENT

This Master Professional Services Agreement (the "Agreement") is entered into effective May 25, 2017 (the "Effective Date"), by and between Calpine Energy Solutions LLC ("DM Services Provider") and the City of Solana Beach ("Customer"). Each party listed above may be referred to individually as a "Party," and collectively as the "Parties."

WITNESSETH

WHEREAS, City of Solana Beach is scheduled to begin providing Community Choice Aggregation ("CCA") services through its CCA program (the "Program"), on or around October 1, 2017;

WHEREAS, Customer has requested that DM Services Provider perform the Data Manager Services described in the Addendum, attached hereto and incorporated herein by this reference (the "Addendum"); and

WHEREAS, Customer will be purchasing electricity for the CCA Program from one or more electric energy suppliers ("Supplier").

NOW, THEREFORE, for and in consideration of the mutual benefits, obligations, covenants, and consideration, the receipt and sufficiency of which are hereby acknowledged, DM Services Provider and Customer hereby agree as follows:

1. **SERVICES.** Subject to the terms and conditions of this Agreement and during the term of this Agreement, DM Services Provider shall provide to Customer the services described in the Addendum (the "Services"). From time to time the parties may add new addenda, which upon execution by both parties, shall be subject to the terms and conditions of this Agreement.

2. **CONDITIONS TO DM SERVICES PROVIDER'S PERFORMANCE.**

(a) **Information and Assistance.** Upon DM Services Provider's reasonable request, Customer shall provide such information and assistance as is reasonably required for DM Services Provider to provide the Services. If Customer fails to provide DM Services Provider with such requested information or assistance then DM Services Provider shall continue to provide in a timely manner any such portion(s) of the affected Services that DM Service Provider can reasonably provide to the extent possible in the absence of such information or assistance. Notwithstanding any provision to the contrary herein, failure by Customer to provide DM Service Provider with such information or assistance shall not constitute an Event of Default, provided, however, that DM Service Provider's performance or lack of performance under this Agreement shall be excused to

the extent that it is hindered, prevented or impacted as a result of Customer's failure or inability to provide such information or assistance.

- (b) Notification. Customer shall notify all other relevant parties, including but not limited to Supplier, the Utility Distribution Company ("UDC"), which is currently San Diego Gas & Electric Company ("SDG&E"), and the bank that receives CCA payments from the UDC, as necessary, of the existence of this Agreement and DM Services Provider's role as contemplated in this Agreement.

3. **FEES AND BILLING.**

- (a) Fees. Customer shall pay all fees due in accordance with the Addendum.
- (b) Billing and Payment Terms. Unless otherwise indicated in the applicable Addendum, DM Services Provider shall invoice Customer monthly for all fees related to Services performed during the previous month. Payment of fees shall be due within thirty (30) days after the date of invoice. All payments must be made in U.S. dollars. Late payments hereunder shall accrue interest at the lower of the rate of one percent (1%) per month, or the highest rate allowed by law, (the "Interest Rate"). If there is a good faith dispute regarding any invoice, Customer shall pay to DM Services Provider the undisputed amount of such invoice. If any part of the dispute is resolved in Seller's favor, Customer shall pay the resolved amount within five (5) Business Days of such resolution and shall include interest at the Interest Rate calculated as of the due date specified in the invoice.
- (c) Taxes. Payments due to DM Services Provider under this Agreement shall be net of all sales, value-added, use or other taxes and obligations.

4. **REPRESENTATIONS AND WARRANTIES.** On the Effective Date and the date of entering into each Addendum, each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and each Addendum; (iii) the execution, delivery and performance of this Agreement and each Addendum are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it; (iv) this Agreement, each Addendum, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (v) it is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming bankrupt, and (vi), in the case of DM

Services Provider, that it has the qualifications, experience and ability to perform the Data Manager Services described in the applicable Addendum.

5. **INDEMNIFICATION.**

(a) Each party to this Agreement (the "Indemnifying Party") agrees to accept all responsibility for loss or damage to any person or entity, and to defend, indemnify, hold harmless and release the other party (the "Indemnified Party"), and the Indemnified Party's supervisors, officers, agents, and employees, from and against any and all liabilities, actions, claims, damages, disabilities, or expenses that may be asserted by any person or entity, to the extent resulting from the Indemnifying Party's breach of any material term of this Agreement, or the Indemnifying Party's negligence or willful misconduct in connection with the performance of this Agreement, but excluding liabilities, actions, claims, damages, disabilities, or expenses to the extent arising from the Indemnified Party's breach of any material term of this Agreement, or the Indemnified Party's negligence or willful misconduct in connection with the performance of this Agreement.

(b) Each Indemnified Party shall promptly notify the Indemnifying Party in writing about the claim or action for which it seeks indemnification, and provide the Indemnifying Party with reasonable information and assistance (at the Indemnifying Party's reasonable expense) to enable the Indemnifying Party to defend such claim or action. The Indemnifying Party shall not settle any indemnified claim or disclose the terms of any such settlement, without the Indemnified Party's prior written consent, which may not be unreasonably withheld, conditioned or delayed.

(c) The indemnity obligation set forth in this Section 5 shall survive termination of this Agreement with respect to any matters arising prior to such termination.

6. **TERM.** Unless earlier terminated pursuant to the terms of Section 7, the term of this Agreement shall be the Effective Period described in the Addendum.

7. **TERMINATION.** No termination payment before customer launch.

(a) **Early Termination Due to Cancellation of Customer's Program.** If Customer determines on or before October 1, 2017, in its sole and absolute discretion, not to proceed with the Program, Customer may terminate this Agreement by giving written notice to DM Services Provider as provided in Section 19 of this Agreement. In such event, Customer shall have no further liability or financial obligation to DM Services, except that DM Services Provider shall be entitled to keep any fees already paid.

(b) **Early Termination Due to Delay of Customer's Program.** If the Program has not commenced by December 31, 2017, either Party may terminate this Agreement

by giving 30 days' written notice to the other Party so long as the Program has not yet begun. In such event neither Party shall have any further obligations under the Agreement.

- (c) Termination for Cause. If any one of the following events (each an "Event of Default") occurs with respect to a Party, then the other Party may terminate this Agreement or the applicable Addendum upon written notice to the defaulting Party: (i) with respect to Customer, Customer fails to pay amounts due hereunder, subject to the provisions of 3(b), above, and such failure continues for fifteen (15) business days following written notice from DM Services Provider; (ii) with respect to DM Services Provider, DM Services Provider defaults in the observance or performance of any of its material covenants or agreements in this Agreement and such default continues uncured for twenty (20) business days following written notice to DM Services Provider; (iii) either Party makes an assignment for the benefit of creditors (other than a collateral assignment to an entity providing financing to such Party), files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced), or is unable to pay its debts as they fall due; or (iv) Customer fails to satisfy UDC's credit-worthiness requirements set forth in the UDC tariffs and such failure continues uncured for twenty (20) business days following written notice to Customer from UDC.
- (d) Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) DM Services Provider shall immediately cease providing Services hereunder; and (ii) any and all payment obligations of Customer under this Agreement will become due within thirty (30) days; provided, however, that in the event that DM Services Provider is the defaulting Party, Customer shall have the right to deduct or set off against any part of the balance due DM Services Provider any amount due from DM Services Provider under this Agreement. Upon such expiration or termination, and upon request of Customer, DM Services Provider shall reasonably cooperate with Customer to ensure a prompt and efficient transfer of all data, documents and other materials to a new services provider in a manner such as to minimize the impact of expiration or termination on Customer's customers. If Customer is the defaulting Party, Customer agrees to pay DM Services Provider reasonable compensation for additional services performed in connection with such transfer, to the extent not otherwise provided for or contemplated in the Addendum.

8. **LIMITATION ON DAMAGES.** FOR ANY BREACH HEREOF, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND

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EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, UNDER ANY INDEMNITY, INCLUDING ANY CLAIMS FOR MONETARY PENALTIES ASSESSED BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ASSOCIATED WITH THE SETTLEMENT QUALITY METER DATA REPORTING OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ANY CLAIM ARISING FROM A BREACH OF THE CONFIDENTIALITY PROVISIONS OF SECTION 13 OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, WITH THE EXPRESS EXCLUSION OF ANY CLAIM FOR INDEMNITY OR OTHER RIGHT UNDER SECTION 5, IN NO EVENT SHALL DM SERVICES PROVIDER'S LIABILITY TO CUSTOMER HEREUNDER EXCEED THE AMOUNT OF THE FEES PAID TO DM SERVICES PROVIDER BY CUSTOMER FOR THE SERVICES PROVIDED HEREUNDER. THE PROVISIONS OF THIS ARTICLE 8 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

9. **FORCE MAJEURE EVENT.** A Party shall be excused from performance under this Agreement and shall not be considered in default with respect to any obligation hereunder (other than obligations to pay money), if, and to the extent, its failure of, or delay in, performance is due to a Force Majeure Event; provided, however, that (a) such claiming Party gives written notice and full particulars of such Force Majeure Event to the other Party promptly after the occurrence of the event relied on, (b) such notice shall estimate the expected duration and probable impact on the performance of such Party's obligations hereunder, (c) such affected Party shall continue to furnish timely regular reports with respect thereto during the continuation of the delay in the affected Party's performance, (d) the suspension of such obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure Event, (e) no obligation or liability of either Party which became due or arose before the occurrence of the event causing the suspension of performance shall be excused as a result of the occurrence; (f) the affected Party shall exercise all commercially reasonable efforts to mitigate or limit the interference, impairment and losses to the other Party by promptly taking appropriate and sufficient corrective action; (g) when the affected Party is able to resume performance of the affected obligations under this Agreement, the affected Party shall give the other Party written notice to that effect, and (h) the affected Party promptly shall resume performance under this Agreement. The term "Force Majeure Event" means the occurrence of any event beyond the reasonable control and without the fault or negligence of the Party affected that results in the failure or delay by such Party of some

performance under this Agreement, in full or part, including but not limited to the following: drought, flood, earthquake, storm, fire, volcanic eruption, lightning, epidemic, war, pests, riot, civil disturbance, sabotage, terrorism or threat of terrorism, strike or labor difficulty, accident or curtailment of supply or equipment, total casualty to equipment, or restraint, order or decree by a governmental authority. Notwithstanding the foregoing, Force Majeure Events shall expressly not include lack of financial resources, material cost increases in commodities or labor, or other economic conditions.

10. **RELATIONSHIP OF PARTIES.** DM Services Provider and Customer are independent contractors and this Agreement will not establish any relationship or partnership, joint venture, employment franchise or agency between DM Services Provider and Customer. Neither DM Services Provider nor Customer will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided for herein.

11. **ASSIGNMENT OF RIGHTS.** Neither Party shall assign any of its rights or delegate any of its responsibilities hereunder without first obtaining the consent of the other Party except it may be assigned or transferred without such consent (i) by either Party to a successor acquiring all or substantially all of the shares and/or the assets of the transferring Party, whether by merger or acquisition, or (ii) by either Party to any wholly-owned affiliate. Any such request shall be made in writing and the consent, if any, shall be made in writing. Any transfer in violation of this provision shall be void.

12. **FURTHER ACTIONS.** The Parties agree to take all such further actions and to execute such additional documents as may be reasonably necessary to effectuate the purposes of this Agreement.

13. **CONFIDENTIALITY.**

- (a) This Agreement and all information shared between the Parties regarding this Agreement and the Services to be provided hereunder (e.g., reports, etc.) is strictly confidential and shall not be disclosed by a Party (except to such Party's affiliates, employees, lenders, counsel and other advisors, permitted assignees, or prospective purchasers who have a need to know the information and have agreed to treat such information as confidential) without the prior written consent of the other Party, except (i) as required by Law, including but not limited to the California Public Records Act and the Brown Act; and (ii) that Customer may share all such data with its Supplier. In addition, DM Services Provider shall comply with the requirements of the customer information confidentiality policy adopted by Customer, and shall take all reasonable steps necessary to ensure that such data remains confidential.

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- (b) DM Service Provider acknowledges that the confidential information about Customer's customers to which it will have access under this Agreement could give it or a third party an unfair competitive advantage in the event that DM Services Provider or any third party were to compete with Customer in the provision of electrical or other services to Customer's customers. DM SERVICES PROVIDER AGREES THAT IT WILL NOT USE ANY INFORMATION IT RECEIVES REGARDING CUSTOMER'S CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT. DM Services Provider agrees not to use any of the CCA data provided to it by Customer for its own marketing purposes. DM Services Provider shall not use such customer information to compete with Customer in any manner, except as provided herein below. Upon termination of this Agreement, DM Services Provider shall (i) return all documents and other materials received from the Customer and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in DM Services Provider's possession that contain customer data, and (iii) deliver to Customer a certificate, signed by an authorized representative of DM Services Provider, stating that DM Services Provider has returned or destroyed all such documents and materials; provided, however, that DM Services Provider may retain copies of information necessary for tax, billing or other financial purposes, to be used solely for such purposes. Notwithstanding anything in the foregoing to the contrary, however, that DM Service Provider is not prohibited from conducting its business with potential customers in Customer's territory, either due to a business opportunity already known to DM Service Provider as of the date of this Agreement, or made known to DM Service Provider, other than Customer, in the ordinary course of DM Service Provider's business. For the avoidance of doubt, any information, including but not limited to customer names, usage, data, etc., that DM Service Provider knows of, learns of or is provided to DM Service Provider by a third party in the ordinary course of DM Service Provider's business other than performance of the Services under this Agreement shall not be deemed to be confidential information for purposes of this Agreement, even if it is the same or similar information such as would be confidential information, if provided to DM Service Provider pursuant to this Agreement.
- (c) The Parties agree that damages would be an inadequate remedy for breach of the provisions in this Section 13 and that either Party shall be entitled to equitable relief in connection therewith, and shall be entitled to recover any damages for such breach as may be provided by law.

14. **COMPLIANCE WITH LAW.** Each party shall be responsible for compliance with all laws or regulations applicable to the Services being provided under this Agreement. If either Party's activities hereunder become subject to law or regulation of any kind, which renders the activity illegal, unenforceable, or which imposes additional costs on such Party for which the Parties

5/17/2017

cannot mutually agree upon an acceptable price modification, then such Party shall at such time have the right to terminate this Agreement upon written notice to the other Party with respect to the illegal, unenforceable, or uneconomic provisions only; the remaining provisions of this Agreement will remain in full force and effect. Any such termination shall not constitute a basis for termination for cause as defined in Section 7, above.

15. **CHOICE OF LAW.** This Agreement, and the rights and duties of the Parties arising hereunder, shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any choice of law rules that may require the application of the laws of another jurisdiction.

16. **INTEGRATION.** This Agreement contains the complete understanding between the Parties, supersedes all previous discussions, communications, writings and agreements related to the subject matter of this Agreement, and, except to the extent otherwise provided for herein, may not be amended, modified or supplemented except in a writing signed by both Parties.

17. **WAIVER.** No waiver by either Party of any right or obligation hereunder, including in respect to any Default by the other Party, shall be considered a waiver of any future right or obligation, whether of a similar or different character. Any waiver shall be in writing.

18. **GOVERNMENTAL ENTITY.** Customer shall not claim immunity on the grounds of sovereignty or similar grounds from enforcement of this Agreement. Except as provided in Section 7(a) above, Customer's failure to obtain any necessary budgetary approvals, appropriations, or funding for its obligations under this Agreement shall not excuse Customer's performance hereunder.

19. **NOTICES.** All notices and other communications required under this Agreement shall be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or email and shall be deemed to have been duly given (i) on the date of service, if served personally on the person to whom notice is to be given, (ii) on the date of service if sent by facsimile or email, provided the original is concurrently sent by first class mail, and provided that notices received by facsimile or email after 5:00 p.m. shall be deemed given on the next business day, (iii) on the next business day after deposit with a recognized overnight delivery service, or (iv) on the third (3rd) day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage-prepaid, and properly addressed as follows:

	Calpine Energy Solutions LLC
If to DM	Attn: Legal Dept.
Services	401 West A Street, Suite 500
Provider:	San Diego, CA 92101
	619-684-8251 (Phone)

619-684-8350 (Fax)

City of Solana Beach

Attn: Gregory Wade

If to Customer: 635 S. Highway 101, Solana Beach, CA 92075
858-720-2431
858-720-6513

20. **TIME**. Time is of the essence of this Agreement and each and all of its provisions. The parties agree that the time for performance of any action permitted or required under this Agreement shall be computed as if such action were “an act provided by law” within the meaning of California Civil Code §10, which provides: “The time in which any act provided by law to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded.”

21. **LIMITATIONS**. Subject to DM Services Provider’s obligations under Section 13, nothing contained in this Agreement shall in any way limit DM Services Provider from marketing any of its products and services outside of Customer’s service territory.

22. **THIRD PARTY BENEFICIARIES**. The Parties agree that there are no third-party beneficiaries to this Agreement either expressed or implied.

23. **INSURANCE**. With respect to performance of services under this Agreement, DM Services Provider shall maintain and shall require any subcontractor performing Call Center or other functions as described in the Addendum, to maintain, insurance as described in Exhibit A, which is attached hereto and incorporated herein by this reference.

24. **ATTORNEYS’ FEES**. In the event that an action, suit or other proceeding is brought to enforce or interpret this Agreement or any part hereof or the rights or obligations of any Party to this Agreement, the prevailing Party will be entitled to recover from the other Party reasonable attorneys’ fees and direct out-of-pocket costs and disbursements associated with the dispute that are incurred by the prevailing party.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement as of the Effective Date provided herein.

Calpine Energy Solutions LLC

City of Solana Beach

By: _____

By: _____

Name: James Wood

Name:

Title: President

Title:

Date:

Date:

ADDENDUM FOR DATA MANAGER SERVICES

Reference: MASTER PROFESSIONAL SERVICES AGREEMENT
Between Calpine Energy Solutions, LLC (“DM Services Provider”)
And City of Solana Beach (“CCA”)
As of May 25, 2017

This Addendum (the “Addendum”) is effective as of May 25, 2017 (the “Addendum Date”) and supplements the Master Professional Services Agreement referred to above (the “Agreement”). Absent manifest error, any inconsistency or conflict between any terms of the Agreement and any terms of this Addendum shall be resolved in favor of the Addendum.

1. **EFFECTIVE PERIOD.** The Effective Period for the Addendum shall be from May 25, 2017 through March 31, 2022. Thereafter the Effective Period shall automatically renew for successive two-year terms (“Term Extensions”) unless either party provides written notice to the other party, in a manner consistent with the notice provisions of the Agreement and at least 90 calendar days in advance of the renewal date, that the notifying party, in its sole discretion, will not renew the term.
2. **DESCRIPTION OF DATA MANAGER SERVICES.** During the Effective Period, DM Services Provider shall provide the Data Management Services listed below.
 - a. Start-Up Support Services. DM Services Provider will:
 - i. Participate in coordination meetings to initiate Community Choice Aggregation Service (“CCA Service”) in SDG&E’s territory. Such meetings may include CCA and/or SDG&E, as necessary, and may require on-site participation by DM Services Provider staff.
 - ii. Complete the technical testing of all necessary electronic interfaces with SDG&E, which provide for the communication by Internet and Electronic Data Interchange (“EDI”) between DM Services Provider and SDG&E to confirm system compatibility related to CCA Service Requests (“CCASRs”), billing

collections, meter reading, and electricity usage data.

- iii. Demonstrate successful completion of all standard SDG&E technical testing and shall have the capability to communicate or exchange the information using EDI, Internet, or an electronic format acceptable to SDG&E.
 - iv. Obtain customer information data, including historical usage for enrolled customers, from CCA or SDG&E.
 - v. Provide customer mailing list to CCA designated printer for customer notices during each Enrollment Phase using methodology agreed upon by CCA, DM Services Provider and CCA designated printer.
- b. Electronic Data Exchange Services. DM Services Provider will:
- i. Process CCA Service Requests (CCASRs) from/to SDG&E which specify the changes to a customer's choice of services such as enrollment in CCA programs, customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).
 - ii. Obtain all customer usage data from SDG&E's Metered Data Management Agent ("MDMA") server to allow for timely billing (according to SDG&E requirements) of each customer (867 Electronic Data Interchange Files).
 - iii. Maintain and communicate the amount to be billed by SDG&E for services provided by CCA (810 Electronic Data Interchange Files).
 - iv. Receive and maintain data related to payment transactions toward CCA Service charges from SDG&E after payment is received by SDG&E from customers (820 Electronic Data Interchange Files).
 - v. Process CCASRs with SDG&E when customer status changes.
 - vi. Provider shall participate in the Customer Data Acquisition Program ("CDA") beta testing for SmartMeter data sharing as CCA's Data Manager.
- c. Customer Information System. DM Services Provider will:
- i. Maintain an accurate database of all eligible accounts that are located in the CCA service area and identify each account's enrollment status, rate tariff election(s), payment history, collection status, on-site generating capacity, if

- applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer CCA Service as mutually agreed to by parties from time to time.
- ii. Allow CCA to have functional access to the Customer Relationship Management system ("CRM") to add customer interactions and other account notes.
 - iii. Allow CCA to view customer email or written letter correspondence within the CRM.
 - iv. Maintain and provide as needed historical usage data on all customers for a time period equal to the lesser of either (a) the start of service to present or (b) five years.
 - v. Until a cloud-based storage solutions for SmartMeter historical usage data is implemented, store SmartMeter historical usage data, as received by the MDMA, for a 48 hour window.
 - vi. Maintain viewing access, available to appropriate CCA staff, to view SDG&E bills for CCA customers. Maintain accessible archive of billing records for all CCA customers from the start of CCA Service or a period of no less than five years.
 - vii. Maintain and communicate as needed record of customers who have been offered CCA Service with CCA but have elected to opt out, either before or after starting CCA Service.
 - viii. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.
 - ix. When requested by CCA, place program charges on the relevant customer account, identified by Service Agreement ID ("SAID").
 - x. Identify customers participating in various CCA programs in database.
 - xi. Include various program payment information in all relevant reports.
 - xii. Perform quarterly CCA program reviews to assess appropriate customer charge level.
 - xiii. Maintain all customer data according to CCA's customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions

including D.12-08-045, including a daily backup process.

xiv. Comply with and cooperate with any required CCA audits, which shall be performed during normal working hours and upon reasonable written notice. Customer acknowledges that DM Services Provider maintains an active trading floor, and therefore any audits will take place off of DM Services Provider's premises.

xv. Maintain a Data Management Provider Security Breach Policy.

d. Customer Call Center. DM Services Provider will:

- i. Provide professional Interactive Voice Response ("IVR") recordings for CCA customer call center.
- ii. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.
- iii. Staff a call center during any CCA Statutory Enrollment Period or Non-Enrollment Period between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding CCA and SDG&E holidays ("Regular Business Hours").
- iv. Provide account specialist to manage escalated calls between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding CCA and SDG&E holidays ("Regular Business Hours").
- v. Provide sufficient staffing to meet the requirements set forth herein:
 - a) 100% of voicemail messages answered within one (1) business day.
 - b) 100% of emails receive an immediate automated acknowledgement.
 - c) 100% of emails receive a customized response within three (3) business days.
- vi. Provide callers with the estimated hold time, if applicable. Provide an automated 'call back' option for callers who will be put on hold for an estimated five minutes or longer.
- vii. Record all inbound calls and make recordings available to CCA staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.

- viii. Track call center contact quality with criteria including:
 - a. Use of appropriate greetings and other call center scripts
 - b. Courtesy and professionalism
 - c. Capturing key customer data
 - d. Providing customers with correct and relevant information
 - e. First-contact resolution
 - f. Accuracy in data entry and call coding
 - g. Grammar and spelling in email communication
- ix. Evaluate customer satisfaction through voluntary customer surveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.
- x. Receive calls from CCA customers referred to Provider by SDG&E and receive calls from CCA customers choosing to contact Provider directly without referral from SDG&E.
- xi. Provide the call center number on SDG&E invoice allowing CCA customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.
- xii. Collect permission (via voice recording, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
- xiii. Respond to telephone inquiries from CCA customers using a script developed and updated quarterly by CCA. For questions not addressed within the script, refer inquiries either back to SDG&E or to CCA.
- xiv. Respond to customer inquiries within 24 hours, excluding weekends and holidays, including inquiries received either through telephone calls, email, fax or web-portal.
- xv. Offer bi-annual cross training to SDG&E call center in coordination with CCA.
- xvi. Ensure monthly status reports are provided during the first week of each

month.

- xvii. Provide weekly status reports during Statutory Enrollment Periods.
 - xviii. Use commercially reasonable efforts to make Spanish speaking call center staff available to customers during Regular Business Hours.
 - xix. Provide translation services for inbound calls for Spanish.
 - xx. Create and maintain forms for the CCA website so that customers may change their account status to enroll or opt out of various CCA programs.
 - xxi. Assist CCA with making calls to customers upon reasonable request to provide additional information on the CCA program, in light of CCA's first-mover position in the SDG&E service territory. CCA will provide scripts for such information to DM Services Provider. DM Services Provider's obligation to make outbound calls is subject to DM Services Provider's obligations to respond to inbound customer calls on a timely basis.
 - xxii. Host CCA meetings with call center management and representatives on a monthly basis.
- e. Billing Administration:
- i. Maintain a table of rate schedules offered by CCA to its customers.
 - ii. Send certain CCA program charges for non-CCA customers, when supported by SDG&E, based on information provided to Provider by CCA.
 - iii. Send certain CCA program charges as a separate line item to SDG&E for placement on monthly bill during term of repayment.
 - iv. Apply SDG&E account usage for all CCA customers against applicable rate to allow for customer billing.
 - v. Review application of CCA rates to SDG&E accounts to ensure that the proper rates are applied to the accounts.
 - vi. Timely submit billing information for each customer to SDG&E to meet SDG&E's billing window.
 - vii. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.

- viii. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.
 - ix. Provide customer mailing list to CCA designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
 - x. Send a CCA provided letter to customers that are overdue. If no payment is received from the customer after a certain amount of time, issue a CCASR to return customer to SDG&E.
- f. Settlement Quality Meter Data Services:
- i. DM Services Provider shall provide CCA or CCA's designated Scheduling Coordinator ("SC") with Settlement Quality Meter Data ("SQMD") as required from SC's by the California Independent System Operator ("CAISO").
 - ii. Obtain historical usage data for enrolled customers, from SDG&E, and utilize for estimation in SQMD process. In the absence of current historical usage, CCA to provide DM Services Provider with usage received from Schedule CCA-INFO in order to calculate Default Usage. CCA will approve Default Usage.
 - iii. Upon CCA's request, DM Services Provider shall submit the SQMD directly to the CAISO on behalf of CCA or CCA's designated SC.
 - iv. CCA agrees that DM Services Provider shall have no responsibility for any charges or penalties assessed by the CAISO associated with the SQMD under an indemnity or otherwise.
 - v. DM Services Provider shall prepare the SQMD in accordance with Prudent Utility Practice, however, DM Services Provider hereby disclaims in advance that any representation is made or intended that the SQMD is necessarily complete, or free from error.
- g. Qualified Reporting Entity ("QRE") Services:
- i. Consistent with terms and conditions included in the Qualified Reporting Entity Services Agreement(s) between CCA and DM Service Provider, serve as QRE for

up to ten (10) locally situated, small-scale renewable generators supplying electric energy to CCA through its feed-in tariff (FIT).

- ii. Submit a monthly generation extract file to the Western Renewable Energy Generation Information System (“WREGIS”) on CCA's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
 - iii. DM Services Provider shall receive applicable electric meter data from SDG&E for CCA FIT projects, consistent with SDG&E’s applicable meter servicing agreement, and shall provide such data to CCA for purposes of performance tracking and invoice creation.
- h. Reporting – DM Services Provider Shall include the following reports, frequency and delivery methods:

Report	Frequency	Delivery Method
Aging	Weekly, Monthly	SFTP
Call Center Statistics	Weekly, Monthly	Email
Cash Receipts	Weekly, Monthly	SFTP
Invoice Summary Report	Weekly, Monthly	SFTP
Days To Invoice	Weekly, Monthly	SFTP
Program Opt Up with Address	Weekly, Monthly	SFTP
Utility User Tax where applicable	Monthly	Email
Invoice Summary Report	Weekly, Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt Out with Rate Class	Ad hoc	CRM
Retroactive Returns	Monthly	Email
Sent to Collections	Monthly	Email
Customer Account Snapshot	Ad hoc	CRM
Customer Account Snapshot	Ad hoc	CRM

with Addresses		
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP

Provider shall also assist CCA, as needed, in compiling various customer sales and usage statistics that may be necessary to facilitate CCA’s completion of requisite external reporting activities. Such statistics will likely include annual retail sales statistics for CCA customers, including year-end customer counts and retail electricity sales (expressed in kilowatt hours) for each retail service option offered by CCA.

3. SERVICE FEES.

- a. Beginning upon the first month the Program (as defined in the Agreement) CCA shall pay DM Services Provider \$1.35 per month, in arrears, for each customer meter enrolled in CCA Service. If one or more CCAs enter the SDG&E service territory, DM Services Provider agrees to meet with CCA and discuss and consider in good faith a reasonable potential reduction in the Service Fee to reflect any cost savings or economy of scale that is accruing to DM Services Provider due to the addition of one or more CCAs to the SDG&E service territory; provided, however, that any reduction in the Service Fee shall not be effective except upon a subsequent written agreement signed by both parties.
- b. Commencing with the first month of the first Term Extension, if applicable, the Service Fee shall escalate annually at the Consumer Price Index (CPI-U for the San Diego region).

4. PRICING ASSUMPTIONS.

The Fees defined in Section 3 include only the services and items expressly set forth in this Agreement. Unless otherwise agreed to by the Parties in an amendment to the Agreement, the cost of any additional deliverables requested by CCA and provided by DM Services Provider to CCA shall be billed at a labor rate of \$150.00 per hour plus any out-of-pocket costs incurred by DM Service Provider without mark-up. Commencing with the first month of the first Term Extension, if

applicable, the labor rate shall escalate annually at the Consumer Price Index (CPI-U for the San Diego region).

5. DEFINITIONS.

“CCA Service” means CCA’s Community Choice Energy Service which permits cities, counties or a joint powers agency whose governing boards have elected to acquire their electric power needs, hereinafter referred to as Community Choice Energy (CCA), to provide electric services to utility end-use customers located within their service area(s) as set forth in California Public Utilities Code Section 366.2 and other Commission directives.

“CCA Service Request (“CCASR”)” means requests in a form approved by SDG&E to change a CCA Service customer’s, utility customer’s or direct access customer’s choice of services which could include returning a CCA Service customer to bundled utility service or direct access service.

“Default Usage” means the average monthly usage value, by rate schedule, used for estimation in the absence of actual historical usage data.

“Mass Enrollment” means the automatic enrollment of customers into a CCA Service program where new service is being offered for the first time to a group of eligible customers.

“Meter Data Management Agent (MDMA) Services” means reading SDG&E’s customers’ meters, validating the meter reads, editing the meter reads if necessary and transferring the meter reading data to a server pursuant to SDG&E standards.

“Prudent Utility Practice” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of similar generating facilities in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, any governmental requirements or guidance, including CAISO, applicable laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Utility Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

5/17/2017

“SDG&E” is the local Utility Distribution Company.

“Statutory Enrollment Period” means three months prior to a Mass Enrollment, the month in which the Mass Enrollment occurs, and two billing cycles following Mass Enrollment. The Statutory Enrollment Period takes place over a six month period.

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CONFIDENTIAL DRAFT
5/17/2017

IN WITNESS WHEREOF, the Parties hereto have executed the Addendum to be effective as of the Addendum Date.

Calpine Energy Solutions, LLC

City of Solana Beach

By: _____

By: _____

Name: James Wood

Name:

Title: President

Title: