

COOPERATION AND ADMINISTRATIVE SERVICES AGREEMENT

THIS COOPERATION AGREEMENT is entered into as of _____, 2020, by and between SAN DIEGO COMMUNITY POWER (“**SDCP**”) and the CITY OF SAN DIEGO (the “**City**”) and shall become effective upon the terms set forth herein. SDGP and the City are sometimes referred to in this Agreement individually as a “**Party**,” or collectively as “**Parties**.”

RECITALS

A. The City Council of the City of San Diego, by Ordinance No. 21133, adopted on October 1 2019, and the City Council of the City of Chula Vista, by Ordinance No. 3463, adopted on September 24, 2019, and The City Council of the City of Encinitas, by Ordinance No. 2019-18 adopted on September 18, 2019, and The City Council of the City of La Mesa, by Ordinance No. 2019-2871, adopted on September 24, 2019, and The City Council of the City of Imperial Beach, by Ordinance No. 2019-1187, adopted on October 2, 2019, and authorized the implementation of a Community Choice Aggregation Program through a Community Choice Energy Program (“**CCE Program**”) to be operated by the San Diego Regional Community Choice Energy Authority (“**SDRCCEA**”), pursuant to California Public Utilities Code Section 366.2(c)(12).

B. The City Council of the City of San Diego, by Resolution No. 312666, adopted on September 17, 2019, and the City Council of the City of Chula Vista, by Resolution No. 2019-179, adopted on September 10, 2019, and the City Council of the City of Encinitas, by Resolution No. 2019-80 adopted on September 11, 2019, and the City Council of the City of La Mesa, by Resolution No. 2019-088, adopted on September 10, 2019, and the City Council of the City of Imperial Beach, by Resolution No. 2019-8087, adopted on September 18, 2019, authorized the City and County, respectively, to enter into a Joint Powers Agreement Relating to and Creating the San Diego Regional Community Choice Energy Authority (the “**JPA Agreement**”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “**Act**”).

C. The Board of Directors of the San Diego Regional Community Choice Energy Authority, by Resolution No. 2020-01, adopted on November 21, 2019, amended the JPA Agreement to change the name of the Authority from “San Diego Regional Community Choice Energy Authority” to “San Diego Community Power”.

D. Section 3.2.9 of the JPA Agreement authorizes the SDGP to make and enter into contracts and accept loans or other aids from any federal, state or local public agency. Section 3.2.13 of the JPA Agreement authorizes the SDGP to enter into an Administrative Services Agreement with the City and County for the provision of administrative services to the SDGP.

E. Section 7.3.2 of the JPA Agreement acknowledges that the City of San Diego has funded and will fund certain activities necessary to implement the CCE Program, and if the CCE Program becomes operational, the costs paid by the City shall be reimbursed from the payment of such charges by customers of SDGP.

F. The SDCP and City desire to enter into this Agreement for the following purposes:

(1) To set forth activities, services and facilities that the City has rendered and will render for and make available to the SDCP in furtherance of the activities and functions of the SDCP under the JPA Agreement and in furtherance of the CCE Program; and

(2) To provide that the SDCP will reimburse the City for past and future actions undertaken, and costs and expenses incurred by the City for and on behalf of the SDCP.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The City agrees to provide for the SDCP such staff assistance, supplies, technical services and other services and facilities of the City as the SDCP may request from time to time in carrying out its functions under the JPA Agreement and in furtherance of the CCA Program. Such assistance and services shall include, but not be limited to: (a) Fiscal management and SDCP credit and financing support, including financial advisory, banking, and treasurer services; (b) Community outreach; (c) contracted general start up consulting support, including organizational operations; (d) Staff support and administrative support at meetings; (e) legal counsel; (f) contracted technical and energy services; and (g) general administrative staff support for day-to-day operations. These services may be provided by officers, employees, or special consultants or contractors of the City.

2. The City agrees to advance necessary funds to the SDCP or expend funds on behalf of the SDCP for the implementation of the JPA Agreement and the CCE Program, including, but not limited to, the costs of preparation of an Implementation Plan, and the planning, studies and environmental assessments for the implementation of the CCA Program and the costs of retaining independent service providers and SDCP staff.

3. The City will keep records of activities and services undertaken pursuant to this Agreement and the costs thereof so that an accurate determination of the SDCP's liability to the City can be made. The City shall provide a quarterly report to the SDCP providing a breakdown of the costs and expenses incurred by the City in rendering activities and services of the City to or on behalf of the SDCP pursuant to this Agreement, together with documentation satisfactory to the SDCP of such costs. Such statement of costs may include the City's administrative and salary expense attributable to services of City officials, employees and departments rendered for the SDCP.

4. The SDCP agrees to reimburse the City for all costs incurred for services by the City pursuant to this Agreement, including costs incurred retroactive to the date of this Agreement, from and to the extent that funds are available to the SDCP from charges to CCA customers receiving electric services from the SDCP, seed funding received as part of its credit package, and/or from revenues from grants or other third-party sources; provided, however, that the SDCP shall have the sole and exclusive right to pledge any such sources of funds to the repayment of other indebtedness incurred by the SDCP in implementing the CCA Program. The costs of the City under this

Agreement will be shown on statements submitted to the SDCP pursuant to Section 3 above. Although the Parties recognize that payment may not occur for a few years and that repayment may also occur over a period of time, it is the express intent of the parties that the City shall be entitled to repayment of the expenses incurred by the City under this Agreement, consistent with the SDCP's financial ability, in order to make the City whole as soon as practically possible and no later than the earlier of five (5) years after SDCP formation date or two (2) years after initial loans/lines of credit are repaid.

5. The SDCP may enter into similar Cooperation and Administrative Services Agreements with one or more Founding Member Cities that provides for reimbursement to the Member City for any costs and funds advanced to or on behalf of the SDCP by the Member City, and that this Agreement would have priority over any such agreement with another Member City for reimbursement entered into after the date of this Agreement.

6. The City shall be reimbursed for costs described in this Agreement incurred by City, in a total amount not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000.00), to assist with funding of Initial Costs as referenced in Section 7.3.2 of the JPA Agreement. Said amount shall be deemed the initial amount owed by SDCP under this Agreement, and further costs incurred by the City, or funding provided to SDCP, pursuant to this Agreement shall be added to such amount, as incurred from time to time, and reimbursement shall include the interest rate set forth in Section 15 below.

7. The City agrees to perform all services required by this Agreement in a manner commensurate with the standards of a reasonable professional having knowledge and expertise in the services provided under this Agreement.

8. Under no circumstances shall the employees of City be considered employees of the SDCP, nor shall employees of the SDCP be considered employees of the City. The City shall be solely responsible and liable for paying all compensation and benefits owed to its employees for the service provided by the City under this Agreement.

9. The SDCP is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to the JPA Agreement, and is a public entity separate from its constituent members. The SDCP shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. The City shall have no rights and shall not make any claims, take any actions or assert any remedies against any of the SDCP's constituent members in connection with this Agreement.

10. Each party shall defend, indemnify and hold harmless the other party (including its officers, employees and agents) against any claim, loss or liability arising out of the performance of this Agreement by such party. Nothing contained herein shall be construed as a waiver of any immunities or defenses that a party may have under applicable provisions of the law, including the provisions of the California Tort Claims Act (Government Code Section 801 et seq.). This mutual indemnification agreement is adopted pursuant to Government Code Section 895.4 and in lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6. This provision shall survive expiration or termination of this Agreement.

11. The City shall make all documentation and records concerning all services performed under this Agreement available to the SDCP for inspection and copying at any reasonable time. The City shall maintain such records for a period of three (3) years following completion of work hereunder.

12. Either party may terminate this Agreement by providing no less than sixty calendar (60) days written notice to the other party. The SDCP shall pay the City for services performed up to the effective date of termination; provided, however, that the terms and conditions set forth in Sections 5 and 6 of this Agreement shall continue in effect following such termination until all amounts due and owing the City hereunder have been repaid in full. For purposes of Section 7.3.2 of the Joint Powers Agreement, the execution of this reimbursement agreement is documentation that SDCP has become operational on or before the effective date of this Agreement.

13. In the event of termination, the City, within thirty calendar (30) days following the date of termination, shall deliver to the authority all records and work products generated by the City under this Agreement.

14. This Agreement and obligations of the parties hereunder are subject to all valid laws, orders, rules and regulations of the authorities having jurisdiction over this Agreement (or the successor of those authorities). Any suits brought pursuant to this Agreement shall be filed in the Superior Court of the County of San Diego, State of California. A waiver by any party of any breach of any term, covenant, or conditions contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or conditions contained herein, whether of the same or a different character.

15. The obligations of the City hereunder shall constitute a contribution, payment and advance of funds, and use of personnel, equipment and property as authorized under Government Code Section 6504, to be repaid to the City by the SDCP as authorized under Government Code Section 6512.1, plus two percent (2%) per annum.

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