

AGREEMENT BETWEEN SAN DIEGO COMMUNITY POWER AND PACIFIC ENERGY ADVISORS, INC. FOR ENERGY CONSULTING SERVICES

This Energy Consulting Services Agreement (“**Agreement**”) is made and entered into on _____, 2020 (“**Effective Date**”), by and between SAN DIEGO COMMUNITY POWER, a California joint powers authority (“**SDCP**”) and PACIFIC ENERGY ADVISORS, INC., a California corporation (“**Consultant**”). SDCP and Consultant are sometimes individually referred to as a “**Party**” and collectively as “**Parties**.”

RECITALS

A. Consultant desires to perform and assumes responsibility for the provision of certain professional services required by SDCP as part of its community choice aggregation program on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing wholesale energy services and is familiar with the plans of SDCP.

B. SDCP desires to engage Consultant to render such professional services for SDCP’s community choice aggregation program (“**Project**”), as set forth in this Agreement.

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. Scope of Services and Term.

1.1. General Scope of Services. Consultant promises and agrees to furnish to SDCP all services, and incidental and customary work necessary to fully and adequately provide the services described in Exhibit A (“Services”). All Services shall be subject to, and performed in accordance with, this Agreement, the schedules and/or exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

1.2. Term. This Agreement shall be effective on the Effective Date. Unless earlier terminated as provided herein, this Agreement shall remain in effect through March 31, 2023 (“**Initial Term**”). 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 a Party provides six (6) months prior written notice of its intent not to extend the term of the Agreement. Consultant shall provide the Services within the term of this Agreement, and shall meet any other established schedules and deadlines.

2. Responsibilities of Consultant.

2.2. Control and Payment of Subordinates: Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this

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

2.2. Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the terms of Exhibit A. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's timely performance under this Agreement, SDCP shall respond to Consultant's submittals in a timely manner.

2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of SDCP.

2.4. Sub-Consultants. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of SDCP. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3. **Conditions to Consultant's Performance.**

3.1 Information and Assistance. Upon Consultant's reasonable request, SDCP shall provide such information and assistance as is reasonably required for Consultant to provide the Services. If SDCP fails to provide Consultant with such requested information or assistance, then Consultant shall continue to provide in a timely manner any such portion(s) of the affected Services that Consultant can reasonably provide to the extent possible in the absence of such information or assistance.

3.2 Notification. SDCP shall notify all other relevant parties, including, but not limited to, its data manager ("**Data Manager**"), the Utility Distribution Company ("**UDC**"), which is currently San Diego Gas & Electric, the California Independent System Operator ("**CAISO**") and SDCP's lender(s), as necessary, of the existence of this Agreement and Consultant's role as contemplated in this Agreement.

3.3. SDCP's Representative. SDCP hereby designates **the Interim Executive Officer or Chief Executive Officer**, or designee, to act as its representative for the performance of this Agreement ("**SDCP's Representative**"). SDCP's Representative shall have the power to act on behalf of SDCP for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than SDCP's Representative, or designee.

3.4 Consultant's Representatives. Consultant hereby designates **Kirby Dusel and John Dalessi**, or their noted designee(s), to act as Consultant's Representatives for the performance of this Agreement ("**Consultant's Representatives**"). Consultant's Representatives shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representatives shall supervise and direct the Services, using their best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.5 Coordination of Services. Consultant agrees to work closely with SDCP staff in the performance of Services and shall be available to SDCP's staff, consultants and other staff at mutually agreeable times.

3.6 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from SDCP, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by SDCP to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to SDCP, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.7 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with pertinent local, state and federal laws, rules and regulations in any manner affecting the performance of the Services, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with the Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to SDCP, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold SDCP, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

4. Insurance

4.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to SDCP that it has secured all insurance required under this section, in a form and with insurance companies acceptable to SDCP.

4.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 or exact equivalent); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage (form CA 0001, code 1 (any auto) or exact equivalent); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

1.3.8.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of two (2) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$2,000,000 per claim. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

4.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by SDCP to add the following provisions to the insurance policies:

(A) General Liability.

(i) Commercial General Liability Insurance must include coverage for (1) Bodily Injury and Property Damage; (2) Personal Injury/Advertising Injury; (3) Premises/Operations Liability; (4) Products/Completed Operations Liability; (5) Aggregate Limits that Apply per Project; (6) Explosion, Collapse and Underground (UCX) exclusion deleted; (7) Contractual Liability with respect to this Agreement; (8) Broad Form Property Damage; and (9) Independent Consultants Coverage.

(ii) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) contain any other exclusion contrary to the Agreement.

(iii) The policy shall give SDCP, its directors, officials, officers, employees, and agents insured status using ISO endorsement forms 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

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

(B) Automobile Liability.

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

(C) Workers’ Compensation and Employers Liability Coverage.

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

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

(D) All Coverages.

(i) Defense costs shall be payable in addition to the limits set forth hereunder.

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

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

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

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

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

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

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

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

4.3. Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to SDCP, its directors, officials, officers, employees, agents and volunteers.

4.4. Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by SDCP. Consultant shall guarantee that, at the option of SDCP, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects SDCP, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

4.5. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to SDCP.

4.6. Verification of Coverage. Consultant shall furnish SDCP with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to SDCP. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by SDCP if requested. All certificates and endorsements must be received and approved by SDCP before work commences. SDCP reserves the right to require complete, certified copies of all required insurance policies, at any time.

4.7. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to SDCP that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name SDCP as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, SDCP may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

5. Fees and Payments.

5.1. Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement as set forth in Exhibit A. Extra Work may be authorized, as described in Section 5.4 below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

5.2 Payment of Compensation. Consultant shall submit to SDCP a monthly itemized invoice which shall include all fees and authorized expenses related to Services during the previous month. SDCP shall, within 30 days of Consultant's invoice submittal, review the invoice and pay all approved charges thereon.

5.3. Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by SDCP. For all authorized expenses, Consultant shall reflect such items, on an itemized basis, in its monthly invoices as noted in Section 5.2.

5.4. Extra Work. At any time during the term of this Agreement, SDCP may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by SDCP to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, or be compensated for, Extra Work without written authorization from SDCP's Representative.

6. Accounting Records.

Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. No more than once per year, Consultant shall allow a representative of SDCP, at SDCP's sole cost and expense, during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement. Any audit or inspection shall, at Consultant's exclusive option, take place off of Consultant's premises.

7. Termination and Expiration of Agreement: Meet and Confer.

7.1. Termination for Convenience. SDCP may, by providing six (6) months written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof. Upon termination, Consultant shall be compensated in accordance with this section. Consultant may also terminate this Agreement for cause or upon six (6) months written notice to SDCP.

7.2. 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 (inclusive of Schedules, Exhibits and Addenda) upon written notice to the defaulting Party: (i) with respect to SDCP, SDCP fails to pay amounts due hereunder, and such failure continues for fifteen (15) business days following written notice from Consultant; (ii) either Party 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 the defaulting Party; (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

become due; or (iv) with respect to SDCP, SDCP 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 SDCP from UDC.

7.3. Effect of Termination. Upon the date of expiration or notice of termination of this Agreement (whether terminated for convenience or for cause, or whether expiring at the end of a term): (i) Consultant shall cease providing Services and Extra Work hereunder except as required or authorized in Section 3.6.1.4 below; (ii) Consultant shall issue an invoice (the "**Termination Invoice**") to SDCP for (a) all outstanding fees for Services rendered by Consultant through and including the date of expiration or termination, (b) all authorized expenses outstanding and unpaid as of the date of expiration or termination,; and (iii) SDCP shall pay the Termination Invoice within thirty (30) days of Consultant's invoice submittal.

7.4. Transition of Services Upon Termination or Expiration. Upon such expiration or termination, and upon request of SDCP, Consultant shall reasonably cooperate with SDCP to ensure a prompt and efficient transfer of all SDCP data, documents and other materials to SDCP or a new services provider, in an industry standard format or formats, and in a manner such as to attempt to minimize the impact of expiration or termination on SDCP's customers. Consultant and SDCP shall mutually agree on transition activities requiring completion and a reasonable schedule of completion associated therewith. Consultant shall provide to SDCP data and documentation, and other Consultant non-proprietary information reasonably requested by SDCP in connection with the transition. Consultant shall provide transition assistance, subject to a mutually agreeable schedule, in such a manner as to attempt to reasonably: (a) ensure the uninterrupted performance of the services, (b) with no degradation in quality, and (c) to avoid disruption in the operation. If SDCP is the defaulting Party or terminates for convenience, SDCP agrees to pay Consultant reasonable compensation for additional services performed in connection with such transfer, to the extent not otherwise provided for or contemplated in the Agreement. Consultant shall (i) return all documents and other materials received from SDCP and all copies (if any) of such documents and tangible materials, and (ii) destroy all other documents or materials in Consultant's possession that contain SDCP customer data; provided, however, that Consultant may retain copies of information necessary for Consultant's tax, billing or other financial purposes, to be used solely for such purposes.

(A) Under no circumstances, except for any event of default by SDCP , shall Consultant cease providing Services to SDCP under this Agreement until clear and unequivocal arrangements for (i) SDCP to assume provision of the Services under this Agreement, (ii) a third party provided to assume provision of the Services under this Agreement, or (iii) a return to Utility electric procurement, is established.

7.5. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, SDCP may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

7.6. Dispute Resolution. The Parties shall meet and confer together in good faith regarding any dispute, controversy or claim (each, a "**Dispute**") arising out of or relating to this

Agreement, or any breach or alleged breach hereof, prior to either Party declaring a breach of the Agreement. A meet and confer shall occur within ten (10) business days of any Dispute whereby the Parties agree to cooperate in good faith to resolve the Dispute, and may use a mutually agreeable third party to resolve such Dispute. In no event shall either Party be delayed or impeded from exercising any of its rights at law or equity, including, without limitation, petitioning a court for provisional relief, including injunctive relief, prior to invoking the meet and confer resolution process.

8. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: Pacific Energy Advisors, Inc.
Attn: Kirby Dusel
1839 Iron Point Road, Suite 120
Folsom CA 95630

SDCP: San Diego Community Power
Attn: Interim Executive Officer
c/o City of San Diego Sustainability Department
1200 Third Avenue, Suite 1800
San Diego, CA 92101

Such notice shall be deemed made when personally delivered or delivered by nationally recognized courier that renders a receipt for delivery.

9. **Intellectual Property and Confidentiality.**

SDCP owns all right, title and interest in and to all SDCP Materials. Upon the expiration of this Agreement, or in the event of termination, SDCP Materials and all SDCP customer data, in whatever form and in any state of completion, shall remain the property of SDCP and shall be promptly returned to SDCP. Upon termination, Consultant may make and retain a copy of such contract materials if permitted by law. SDCP Materials shall mean any and all data created by Consultant specifically for SDCP in the performance of the Services and Extra Work pursuant to this Agreement (“**SDCP Materials**”).

For the avoidance of doubt, Consultant’s intellectual property, including, but not limited to, Consultant’s trademarks, service marks, trade names and other designations, web site(s), web design(s), internal systems, computer systems, programs, software (including software code), ideas, know-how, work product, copyrights, patents, trade secrets and other proprietary and/or intellectual property shall remain the exclusive property of Consultant.

10. Confidentiality. All memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data either created by or provided to Consultant specifically in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the

prior written consent of SDCP, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use SDCP's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of SDCP.

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

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

13. Indemnification. Consultant (including its officials, officers, employees, agents, sub-consultants and contractors, collectively the "Indemnifying Party") shall, to the extent of its own willful, reckless or negligent misconduct, defend, indemnify and hold SDCP, its officials, officers, consultants, employees, and volunteers ("**Indemnified Party**") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident, arising out of or in connection with the performance of the Services, the Project or this Agreement, including reasonable attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by SDCP, its directors, officials, officers, consultants, employees, agents or volunteers. Consultant's indemnification obligations herein are conditioned upon the Indemnified Party: (i) promptly notifying the Consultant of any claim in writing; and (ii) cooperating with Consultant in the defense of the claim.

14. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

15. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be governed by a court of competent jurisdiction in San Diego County.

17. SDCP's Right to Employ Other Consultants. SDCP reserves right to employ other consultants in connection with this Project.

18. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

19. Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of SDCP. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation

or transfer. Notwithstanding the foregoing, the Parties agree that in the absence of a merger, the sale or transfer of all or substantially all of the shares of the Consultant shall not constitute an assignment or transfer of this Agreement.

20. Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to SDCP include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

21. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

22. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

23. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

24. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

25. Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, SDCP shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of SDCP, during the term of his or her service with SDCP, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

26. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

27. Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

28. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

29. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

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

SAN DIEGO COMMUNITY POWER

PACIFIC ENERGY ADVISORS, INC.[*]

By : _____
Name: _____
Title: _____

By : _____
Name: _____
Title: _____

ATTEST:

By : _____
Name: _____
Title: _____

Secretary, SDCP Board of Directors

APPROVED AS TO FORM:

SDCP General Counsel

* A corporation requires the signatures of two corporate officers.

One signature shall be that of the chairman of board, the president or any vice president and the second signature (on the attest line) shall be that of the secretary, any assistant secretary, the chief financial officer or any assistant treasurer of such corporation.

If the above persons are not the intended signators, evidence of signature authority shall be provided to SDCP.

EXHIBIT A

SERVICES/TERMS AND CONDITIONS

Consultant and SDCP agree that the following products and services (“**CCA Services**”) shall be provided by Consultant for the benefit of the SDCP under the terms and conditions as described herein. The services to be provided under this Schedule will commence upon execution of the Agreement.

Pacific Energy Advisors, Inc. (PEA) will provide consulting and technical services to San Diego Community Power (SDCP), supporting certain essential technical tasks related to the implementation (Task 1), operation (Task 2), and development and administration of a distributed energy resources (DER) procurement process (Task 3) for SDCP’s Community Choice Aggregation (CCA) program. Task-specific detail related to PEA’s scope of work is described below.

TASK 1: IMPLEMENTATION SUPPORT

The following services reflected under Task 1 address a variety of technical activities that will be necessary in supporting the successful implementation and launch of SDCP’s CCA program.

1) Pro Forma and Implementation Planning Updates

PEA will prepare a new operating pro forma for SDCP with current rate projections, power supply costs, and all other working assumptions. PEA will similarly prepare a forecast of power supply and other expenses as well as coordinate with SDCP management and accountants in supporting the development of SDCP’s annual (FY 2020/21) budget. Additionally, PEA will evaluate revised phasing strategies to optimize customer enrollment timing and cash flows. This also includes PEA’s in-person participation at SDCP to present the updated pro forma and discuss alternative phase-in approaches.

2) Supplier Selection and Contracting

Prior to serving customers, SDCP will need to secure requisite energy products and services, including shaped energy (i.e., a quantity of energy delivered by the supplier(s) according to an agreed upon schedule), resource adequacy capacity (i.e., reserve capacity required to meet mandatory compliance obligations for CCAs and other load serving entities), renewable energy and carbon-free energy (if applicable). For SDCP, such energy products and services will be procured through competitive solicitation processes utilizing qualified suppliers, which have agreed to previously negotiated terms and conditions for such transactions. PEA shall develop and complete the following key tasks in collaboration with SDCP related to supplier selection and contracting:

- Complete requisite data analysis for SDCP, as necessary to determine the customer energy quantities.
- Determine desired energy and capacity quantities, which would supply aggregate customer requirements, including anticipated participation in default and voluntary retail service options.
- Prepare necessary exhibits specifying energy and capacity product quantities to facilitate supplier bidding and related evaluations.
- Evaluate offers received in response to the aforementioned solicitation processes and assist CCA in selecting the preferred supplier(s) of such products and services.
- Support “go/no-go” decision to launch the program based on final power supply prices and then-current SDG&E retail electric rates.
- Perform necessary coordination activities with SDCP’s selected supplier(s), scheduling coordinator and data manager, as well as other related service providers (if necessary) during startup.

3) Regulatory Registrations and Compliance Systems

As a Load Serving Entity (LSE) within the state of California, SDCP will be required to comply with a variety of regulations, including participation in certain reporting programs administered by the California Public Utilities Commission (CPUC) and California Energy Commission (CEC). While some of these reporting programs will not be applicable until the second year of operation, other programs will require attention prior to service commencement or shortly thereafter. In particular, the annual electric load forecast (as it relates to future reserve capacity, also known as “resource adequacy,” compliance obligations), Western Renewable Energy Generation Information System (WREGIS) account registration, preparation of joint cost comparisons (a customer communication requirement created by SB 790) and preliminary power source disclosures will all require pre-launch completion. To ensure compliance with these requirements, PEA shall complete the following activities:

- Assist in identifying requisite resource adequacy (RA) capacity quantities that will need to be procured by CCA for purposes of demonstrating regulatory compliance.
- Assist in procuring requisite RA capacity from qualified suppliers.
- Prepare load forecast and related filings to ensure compliance with California’s RA program.

- Coordinate with designated SDCP staff to complete requisite registration materials for SDCP to become a WREGIS account holder – a WREGIS account will be necessary to track and report on renewable energy purchases for purposes of complying with California’s Renewables Portfolio Standard (RPS) program and substantiating procurement of renewable energy, generally speaking.
- To the extent such services aren’t provided by SDCP’s selected scheduling coordinator, PEA shall assist SDCP in becoming a candidate Congestion Revenue Rights (CRR) holder with the California Independent System Operator (CAISO) and will coordinate with SDCP’s scheduling coordinator to promote the successful completion of this process – CRRs may help mitigate certain financial risks and reduce costs associated with energy delivery within the CAISO market.
- Assist in ancillary CAISO setup activities, as required of California CCA programs.
- Assist in the preparation of requisite customer cost comparisons, as necessary.
- Assist in the preparation of statutorily required Joint Rate Comparison (JRC) in cooperation with SDG&E – the JRC provides CCA customers with comparative rate and power content details regarding available electric service options.
- Assist in completing SDCP’s RPS Procurement Plan, as required by the CPUC, relying on previously utilized document templates that have been developed for this purpose.
- Assist in completing SDCP’s annual RPS compliance reporting activities.
- Develop Integrated Resource Plan pursuant to CPUC requirements.

4) Rate Setting

Establishing initial customer rates will be a key task during the pre-startup phase. Such rates will be established in consideration of SDG&E’s then-effective rates schedules under which prospective customers currently receive electric service. Effective rate setting will ensure that SDCP’s program is financially sustainable and able to fulfill its financial obligations while remaining competitive with the incumbent utility. PEA shall develop and complete the following work items:

- Develop preliminary and final revenue requirements for the first year of program operation.
- Prepare preliminary and final rate schedules for the first year of program operation.
- Prepare a draft Net Energy Metering (NEM) tariff, including applicable tariff language and sample customer impact analyses.
- Prepare SDCP/SDG&E cost comparisons to ensure an understanding of anticipated customer cost impacts.

5) General Implementation Support

During the startup phase, there may be a need for technical support with regard to a variety of implementation activities. PEA will provide such support on an as-needed basis to SDCP, ensuring that sufficient expertise is available to address a broad range of potential needs. PEA's general support may include, but is not limited to the following:

- Coordination with staff, suppliers and other contractors to ensure effective program launch.
- Prepare for and participate in up to two (2) on-site meetings per month with SDCP leadership and/or staff, providing technical support during key discussions and decision making leading up to SDCP launch; PEA will be available to assist staff in preparing meeting materials and presenting such materials, as necessary. If additional meetings are deemed necessary by SDCP, PEA will coordinate with SDCP staff to identify mutually agreeable schedules for such meetings.
- Coordination with pertinent jurisdictional regulatory agencies: to the extent that jurisdictional regulatory agencies have questions regarding applicable reports/submittals and/or general questions regarding SDCP's operations, PEA would be available to address such inquiries and/or participate in related meetings or teleconferences.
- Coordination with key customers: PEA would be available to participate in discussions/meetings with key customer accounts, providing technical expertise related to rates, resource planning, power supply and anticipated environmental impacts.
- General as-needed advisory services.

TASK 2: ONGOING OPERATIONAL SUPPORT

The services described under Task 2 cover a variety of technical activities that will be necessary to support the initial and ongoing operation of SDCP's CCA program. Task-specific detail is described below.

1) Power Resources Management

Working with SDCP leadership as well as its designated Scheduling Coordinator, PEA will manage SDCP's power resources portfolio in accordance with its adopted policies and all applicable regulatory requirements. PEA will perform Front and Middle Office functions for SDCP encompassing the areas of resource planning, portfolio management, risk management, electric procurement, and the variety of regulatory compliance activities related to electric power supply. The following tasks are included in this service:

(a) Maintain Annual and Long-Term Sales Forecast:

- Prepare and maintain SDCP customer and electric sales forecasts, including: 1) monthly enrolled accounts, megawatt hours (MWh) and megawatts (MW) by load profile group; and 2) monthly coincident peak MW and hourly MW.
- Update long-term sales forecasts, as necessary, to maintain accuracy; monitor accuracy of load forecasts on a monthly basis; consider adjustments to such forecasts if observed variance exceeds threshold of 5% forecast error.

(b) Electric Supply Management:

- Develop and maintain load and resource balance models to identify incremental electric procurement needs in consideration of quantified open positions, SDCP resource and risk management policies, and applicable regulatory requirements; coordinate with management to develop and implement procurement strategies to address electric resource needs.
- Support procurement and/or sales of energy (e.g., system, RPS, and greenhouse-gas free) and capacity products including preparing requisite solicitation documents, participating in supplier/developer communications, providing analytical support during proposal/bid evaluation, negotiating commercial contract terms, and other related, as-needed activities.
- Annually, prepare and update internal resource plans, including ten-year load and resource projections, encompassing both supply and demand side resources.
- Develop Integrated Resource Plan pursuant to CPUC requirements.
- Review and validate periodic invoices received from SDCP's Scheduling Coordinator and electric suppliers to ensure charges are consistent with contract terms; bring any identified discrepancies to management's attention; and support attempts to resolve issues with counterparties.
- Monitor energy market activities, including pricing trends and forward curves related to market energy, renewable energy and capacity.
- Maintain/manage relationships with qualified suppliers of requisite energy products: participate in periodic calls, email exchanges and other communications with and/or on behalf of SDCP.

(c) Risk Management:

- Draft a Risk Policy that is tailored to SDCP's needs, focusing on information specific to SDCP's operations in order to make well-informed decisions and incorporating industry best practices.
- Draft Credit Guidelines that help shield SDCP from counter party credit risk while minimizing collateral postings.
- Determine the best methods and/or systems to aggregate positions, value positions, value risks, and establish the tolerance bands based upon SDCP's risk appetite. Prepare reports and review with SDCP's senior management at regularly scheduled Risk Oversight Committee meetings.
- Perform scenario analyses as needed, capturing the range of likely outcomes and the circumstances under which they could occur.

(d) Regulatory Compliance:

- Manage renewable energy portfolio per state/program standards; prepare RPS compliance filings and serve as SDCP's liaison with pertinent regulatory agencies for matters related to RPS compliance.
- Manage SDCP's WREGIS accounts and various subaccounts, including report preparation, certificate transfer review and retirement (to facilitate mandatory and regulatory compliance), as-needed generator registration (example: Feed-In Tariff projects under contract with SDCP) and other account management activities. Provide support during third-party audit processes, if applicable, including data gathering and analysis, reporting and liaison activities with SDCP's selected auditor and pertinent regulatory agencies.
- Manage RA portfolios per state/program standards; prepare year-ahead and month-ahead peak demand forecasts and resource adequacy compliance demonstration filings; coordinate with SDCP's Scheduling Coordinator and regulatory agencies to resolve any discrepancies that may arise during compliance review.
- Provide data analysis and assist in preparing reports related to the California's Power Source Disclosure Program, including technical elements of Power Content Label development and review; such support may also entail regulatory liaison activities required to successfully complete applicable reports.
- Prepare compliance filings pursuant to the CEC's biennial Integrated Energy Policy Report, Quarterly Fuels and Energy Report, and the U.S. Energy Information Agency monthly EIA-826 and annual EIA-861 reports.
- Prepare all required compliance documentation under this task and coordinate with SDCP's regulatory personnel or contractors, who will be responsible for formal submission of filings to the appropriate regulatory body.

2) Rate Setting, Financial Modeling & Performance Reporting

PEA will maintain a working pro forma financial model for SDCP use in budgeting, cash flow planning, financial performance monitoring, and SDG&E scenario analyses. PEA will design customer electric rates and update rates for approval by SDCP's governing board on an annual basis – such rates will be established at sufficient levels to meet adopted financial targets. PEA will provide technical rate support including monitoring SDG&E rate changes as they impact customer cost comparisons and also provide assistance with the preparation of joint cost comparison models. The following tasks are included as part of this service:

(a) Rate-setting

- Annually, develop proposed SDCP rate schedules; cost of service modeling; SDG&E benchmarking; billing determinant (e.g., Time of Use energy) forecast; present and proposed rate revenue forecast.

- Collaborate with staff, SDCP, and SDCP governing bodies, as necessary, in regard to rate changes, including necessary new rate designs or options.
- Provide support for the development and administration of certain CCA customer programs, including NEM, green energy, and Feed-In Tariffs, if desired by SDCP.
- Monitor realized rate revenue vs. projections to identify necessary rate changes.
- Monitor SDG&E rates and surcharges and assist SDCP with preparation of mandated joint cost comparisons reports.

(b) Financial Model (pro forma)

- Develop and maintain pro forma financial models of monthly income/expense projections, cash flow and cash balances.
- Update pro forma models as necessary to incorporate current load, resource and market data; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances.
- Prepare forecast of power supply and other expenses for annual budget.
- Prepare draft annual budget for the SDCP program in cooperation with SDCP management and accountants.
- As necessary, coordinate with SDCP and its financial advisors with regard to matters that may impact SDCP's financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.

(c) Performance monitoring and reporting

- Prepare monthly executive summary reports containing information on key program performance metrics related to enrolled customer accounts, customer opt-out rates, electricity sales volumes, revenues, comparisons to forecasts/budgets, comparisons to previous periods, and highlighting noteworthy operational insights.
- Monitor net open positions and provide monthly reporting of net open positions pursuant to adopted SDCP risk management policies.

TASK 3: DER ASSESSMENT AND PROCUREMENT

DERs must be effectively integrated into SDCP's resource planning and portfolio operations as well as considerate of program finances and related customer rates. PEA will work with SDCP in determining a DER procurement strategy and specifications related to DER program targets that align within SDCP's policy goals, risk preferences, and program finances. PEA will help develop and administer a DER procurement process, consistent with the aforementioned strategy. Related to DER procurement, PEA shall complete the following key tasks in collaboration with SDCP:

- Facilitate review and refinement of SDCP's DER ambitions in determining the volumetric targets.
- Quantify desired DER targets and implementation timelines, bid requirements and other solicitation parameters.
- Prepare draft solicitation materials, including related bid workbooks (which will provide an organized, uniform framework for bidder responses), to support the procurement of DERs.
- Assist SDCP (in cooperation with SDCP's designated legal counsel) in developing and finalizing form transaction documents – PEA anticipates that such transaction documents will rely heavily on similar documents previously utilized by other CCA organizations.
- Evaluate offers received in response to the aforementioned solicitation processes and assist SDCP in selecting the preferred supplier(s).
- In conjunction with the SDCP's designated legal counsel, support power purchase agreement completion.
- Assist SDCP in addressing any potential credit issues it may face during its contract negotiations.

Fee for Performance of Task 1 Services:

March 2020 – February 2021: \$19,250/month, not inclusive of direct travel costs

Fee for Performance of Task 2 Services:

March 2021 – March 2022: \$28,500/month, not inclusive of direct travel costs

SDCP shall have the option to extend the contract past March 2022 yearly at an annual escalation rate of 2%. If a multi-year agreement is put in place for Task 2 Services, meaning an agreement that extends from March 2021 through December 2023 (or beyond), PEA will waive the noted 2% annual escalation for such services.

Fee for Performance of Task 3 Services:

PEA will provide the services described in Task 3 on a time-and-materials basis. SDCP shall pay Contractor based on the following rate schedule:

Staff Name	Hourly Rate
John Dalessi	\$305
Kirby Dusel	\$295
Sam Kang	\$285
Brian Goldstein	\$280
Dona Stein	\$245
Alden Walden	\$165

Travel and related expenses will be billed monthly at cost with no markup. Examples of such expenses will likely include airfare, rental vehicles, airport parking and hotels (if meeting attendance is requested over a multi-day period). If desired, PEA will coordinate with SDCP in developing a mutually agreeable budget for such expenses – note that such budget would be additive to the monthly fees for services, as noted above, and may impact the frequency of travel by PEA to attend on-site meetings.