**RIDER AND AMENDMENT**

**To the**

**BIORAM RENEWABLE AUCTION MECHANISM**

**POWER PURCHASE AGREEMENT**

*Between*

**SAN DIEGO GAS & ELECTRIC COMPANY**

(as “Buyer”)

*and*

The Parties concurrently enter into the BIORAM Renewable Auction Mechanism Power Purchase Agreement (“BioRAM PPA”), dated ***[insert]***, and hereby agree to the following modifications to the BioRAM PPA with this Rider and Amendment to the BioRAM PPA (“BioRAM Rider”; and together, the “Agreement”). Buyer and Seller are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used herein and not otherwise defined in this BioRAM Rider shall have the meanings ascribed to such terms in this BioRAM PPA.

1. The following changes are made to Section 1.1:
   1. The definition of Commercial Operation Date is amended to include the phrase “the first calendar day of the month following” after the word “means”.
   2. The following definition is inserted immediately after the definition of “Contract Quantity”:

“Contract Quarter” means each period of three (3) consecutive months, commencing for the first quarter on the Commercial Operation Date and continues throughout the Delivery Term.

* 1. The following definition is inserted immediately after the definition of “Deemed Bundled Green Energy”:

“Default Energy Price” means the lesser of (i) the High-Hazard Zone Fuel Energy Price set forth in Section 4.1(a), and (ii) $89.23/MWh.

* 1. The following definition is inserted immediately after the definition of “Governmental Charges”:

“Governor’s Emergency Proclamation” means the emergency proclamation issued on October 30, 2015, to protect public safety and property from falling dead trees and wildfire, specifically due to bark beetle-caused tree mortality and the hazards such tree mortality creates for the State of California, among other things, wildfires and tree falls that endanger thoroughfares, electric power lines, and public and private structures.[[1]](#footnote-1)

* 1. The “Guaranteed Commercial Operation Date” definition is modified by replacing the phrase “twenty four (24)” with “thirty-six (36)” before the word “months”.
  2. The following definition is inserted immediately after the definition of “Guaranteed Energy Production”:

“High-Hazard Zone Fuel” means bioenergy feedstock, measured in bone dry tons (BDT), from sources designated by the Responsible Agency as Tier 1 or Tier 2 high hazard zones for wildfire and falling trees, pursuant to the Governor’s Emergency Proclamation, and which meet such designation at the time such fuel is procured for the purpose of generating Bundled Green Energy from the Project.

* 1. The following definition is inserted immediately after the definition of “High-Hazard Zone Fuel”:

“High-Hazard Zone Fuel Energy Price” means the price as set forth in Section 4.1(a).

* 1. The following definition is inserted immediately after the definition of “Manager”:

“Minimum High Hazard Zone Fuel Requirement” means the minimum annual percentage of High Hazard Zone Fuel used to generate all Bundled Green Energy from the Project in each Contract Year, based on the amounts stated by Seller in the four (4) Quarterly Fuel Attestations during the Contract Year.

* 1. The following definition is inserted immediately after the definition of “Project Cure Period”:

“Quarterly Fuel Attestation” has the meaning set forth in Section 3.3(g)(ii).

* 1. The following phrase is inserted in the third parenthetical of the first sentence in the definition of “Replacement Price,” after the phrase ”including its associated Green Attributes”:

“and value associated with the High-Hazard Zone Fuel used by the Project.”

* 1. The following definition is inserted immediately following the definition of “Replacement Price”:

“Responsible Agency” or “Responsible Agencies” means the agency responsible for designating sources of high hazard fuel pursuant to the Proclamation, including the Department of Forestry and Fire Protection (Cal-Fire), the California Natural Resources Agency, Caltrans, and the California Energy Commission or successor agency or agencies.

* 1. The following definition is inserted immediately following the definition of “Seller”:

“Seller’s Annual Fuel Supply Plan” has the meaning set forth in Section 3.3(g)(i).

1. The heading of Section 3.1(a) is amended by adding the phrase ”; Minimum High Hazard Zone Fuel Requirement” and the following is inserted immediately following the last sentence of the Section:

“Seller shall use commercially reasonable efforts to meet the Minimum High Hazard Zone Fuel Requirement in each Contract Year, which shall be equal to the percentage listed below corresponding to calendar year in which the any deliveries occur: forty percent (40%) for 2016, fifty percent (50%) for 2017, sixty percent (60%) for 2018, and eighty percent (80%) for each subsequent calendar year. If the Contract Year does not start on January 1st of each calendar year, the weighted average of the Minimum High Hazard Zone Fuel Requirement will be calculated for the Contract Year. Failure to meet such requirements shall either result in (i) a one-time Seller termination in accordance with Section 3.1(c), or (ii) a lower Energy Price in accordance with Section 4.1(a).”

1. Section 3.1(c) is deleted and replaced with the following:

“3.1(c) Delivery Term; Seller’s Termination Right”. The Parties agree that the period of Product delivery is ***[for Existing facilities, insert as applicable: “five (5) Contract Years; provided that Buyer shall have the option, exercisable in Buyer’s sole discretion, to extend the Delivery Term for consecutive one (1) year periods, up to an additional five (5) consecutive years, by providing Notice to Seller no later than sixty (60) days prior to the then current end date of the Delivery Term”, “ten (10) Contract Years”, “fifteen (15) Contract Years”, or, “twenty (20) Contract Years”; For new facilities, insert as applicable: “ten (10) Contract Years”, “fifteen (15) Contract Years”, or “twenty (20) Contract Years”]***. [NOTE: SDG&E is seeking clarification from the California Public Utility Commission’s General Counsel as to Resolution E-4770 (BioRAM Resolution) and reserves the right to modify its BioRAM solicitation as to contract term length based upon the General Counsel’s review.] Notwithstanding the foregoing, Seller shall have one time right to terminate this Agreement with no further obligation of either Party (except for the payment of amounts already paid or payable, including any true-up payment due to Buyer under Section 4.5) before the end of the Delivery Term within thirty (30) days of the first time that Seller fails to meet the applicable Minimum High Hazard Zone Fuel Requirement in any Contract Year. As used herein, “Delivery Term” shall mean the period of Contract Years specified above beginning on the Commercial Operation Date and continuing until the end of the last Contract Year unless terminated earlier as provided by the terms of this Agreement.”

1. Section 3.3(h) is inserted immediately following Section 3.3(f), as follows:

### “(h) Fuel Reporting Requirements.

#### Seller’s Annual Fuel Supply Plan: thirty (30) days prior to the start of each Contract Year, Seller shall provide Buyer with Seller’s Fuel Supply Plan in the form of Exhibit J-2, as may be modified by Buyer from time to time in Buyer’s sole discretion, signed showing, among other things: (1) Seller’s proximity to the High Hazard Zones on a map; (2) a non-binding good faith estimate of Seller’s anticipated fuel consumption over the next twelve month period; (3) identifying the source(s) and volume(s) (in bone dry ton (BDT) and British Thermal Units (MMBtu)) of High Hazard Zone Fuel that Seller reasonably expects to procure to meet its Minimum High Hazard Zone Fuel Requirement over the next twelve month period; (4) a proposed delivery schedule, including volumes, for the High Hazard Zone Fuel it expects to procure over the next twelve month period; and (5) the expected conversion of fuel to electricity (MMBtu to MWh).

#### Quarterly Fuel Attestation: No later than thirty (30) days after the end of each Contract Quarter during the Delivery Term, Seller shall provide to Buyer the Quarterly Fuel Attestation in the form of Exhibit J-1 of this Agreement, as may be modified by Buyer from time to time in Buyer’s sole discretion, signed by an officer or , managing member of Seller specifying, among other things, the amount of High Hazard Zone Fuel and other biofuel feedstock used to generate all Energy during the previous quarter, an attestation from Responsible Agency(ies) of the location of such High Hazard Zones where such fuel was sourced, documentation from Seller’s contractors regarding the location and transportation of such High-Hazard Zone Fuel used to generate Energy during the previous quarter.”

1. The first sentence in Section 4.1(a) is deleted and replaced with the following:
   * 1. Energy Price. The price for the Bundled GreenEnergy that is delivered to Buyer in each Contract Year, or partial calendar year as stated in Section 4.6 herein, shall be the: (i) High-Hazard Zone Fuel Energy Price if the Project meets or exceeds the Minimum High Hazard Zone Fuel Requirement, or (ii) Default Energy Price if the Project does not meet the Minimum High Hazard Zone Fuel Requirement (in either case, as applicable, the “Energy Price”) in accordance with the chart below. If the Project does not meet the Minimum High Hazard Zone Fuel Requirement in any Contract Year, the Default Energy Price shall be applicable for the remainder of the Delivery Period, regardless of whether the Project meets future High Hazard Zone Fuel Requirements in subsequent Contract Years of the Delivery Term.

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| --- |
| **High-Hazard Zone Fuel Energy Price ($/MWh)** |
| tbd |

1. The new Section 4.5 is inserted immediately following Section 4.4 as follows:

## 4.5 True-Up. For any Contract Year that Buyer paid Seller the High-Hazard Zone Fuel Energy Price when the Project did not meet the Minimum High Hazard Zone Fuel Requirement, Seller shall owe Buyer a true-up payment within thirty (30) days of receipt of an invoice for the overpayment amount, or Buyer may elect to set off future payments until such true-up payment has been recovered.

1. Section 4.6 is inserted immediately following Section 4.5 as follows:

## 4.6 High-Hazard Zone FuelEnergy Price Change. If Seller reasonably believes that the Project is incapable of meeting the Minimum High Hazard Zone Fuel Requirement or Seller otherwise elects not to meet Minimum High Hazard Zone Fuel Requirement for any reason, Seller shall promptly notify Buyer in writing, and the Default Energy Price shall apply to Seller’s monthly invoices for the remainder of the Delivery Term.

1. The following phrase is inserted at the end of Section 5.1(b)(i):

“or fails to deliver any Quarterly Fuel Attestation and such failure is not cured within thirty (30) days”

1. The fifth sentence of Section 5.3 is deleted and replaced with the following:

“The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes, Green Attributes, and value associated with the High Hazard Zone Fuel shall be deemed direct damages covered by this Agreement.”

1. Section 8.3(a)(ii) is deleted entirely and replaced with the following:

(ii) Delivery Term Security in the amount of ***[Insert amount which is the higher of 5% of expected total project revenues over the Delivery Term or Default Energy Price times the expected Contract Quantity from Section 3.1(e)]*** in the form of cash or a Letter of Credit from the commencement of the Delivery Term until the return date specified in Section 8.3(b)[(i)**/**(ii)] below.

1. Section 10.2(c) is deleted entirely and replaced with the following:

(c) Seller and, if applicable, its successors, represents and warrants that fuel used to meet the Minimum High Hazard Zone Fuel Requirement is High Hazard Zone Fuel.

1. The following phrase is inserted in Section 11.3(b)(iii) after the reference to Section 10.2:

“or any information contained in Quarterly Fuel Attestation(s)”

1. The following Section 11.3(b)(iv) is inserted immediately after of Section 11.3(b)(iii):

#### Seller covenants that no later than thirty (30) days after the last day of each Contract Quarter of each Contract Year during the Delivery Term, Seller shall provide to Buyer its Quarterly Fuel Attestation, along with all appropriate supporting documentation reasonably necessary, as determined by Buyer in its sole discretion, to support the Project’s compliance with the Minimum High Hazard Zone Fuel Requirement for such Contract Year, in the form provided in the Form of Quarterly Fuel Attestation in Appendix J-1, as may be modified by Buyer from time to time in Buyer’s sole discretion.

1. The following phrase is inserted at the end of the first sentence in Section 13.3:

“and any documentation kept by Seller or its agents or third-party contractors regarding information contained in Seller’s Quarterly Fuel Attestations or related to meeting the Minimum High Hazard Zone Fuel Requirement”

1. Miscellaneous
   1. Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.
   2. Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect. Each of the Parties hereby represents and warrants that the representations contained in the Agreement are true on and as of the date hereof as if made by the Party on and as of said date.
   3. Governing Law. THIS BIORAM RIDER AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS BIORAM RIDER.
   4. Successors and Assigns. This BioRAM Rider and Amendment shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
   5. Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this BioRAM Rider on behalf of such Party and to bind such Party to this BioRAM Rider. Any written notice required to be given under the terms of this BioRAM Rider shall be given in accordance with the terms of the Agreement.
   6. Effective Date. This BioRAM Rider shall be deemed effective as of the Execution Date.
   7. Further Agreements. This BioRAM Rider shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.
   8. Counterparts; Electronic Signatures. This BioRAM Rider may be executed in one or more counterparts, each of which will be deemed to be an original of this BioRAM Rider and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this BioRAM Rider and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this BioRAM Rider as to the Parties and may be used in lieu of the original BioRAM Rider for all purposes.

#### [Remainder of Page Left Intentionally Blank.]

IN WITNESS WHEREOF, the Parties have caused this BioRAM Rider to be duly executed as of the date of the Agreement.

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| [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  a [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]  By:  Name:  Title: | SAN DIEGO GAS & ELECTRIC COMPANY  a California corporation  By:  Name:  Title: |

**Exhibit J-1**

**FORM OF SELLER’S Quarterly Fuel Attestation**

1. **Name and Address of Facility (“Project”)**

Name:

Street:

City: State: Zip Code:

Generation Nameplate (kW):

1. **Reporting Period:**

From: [MONTH DAY, YEAR]

To: [MONTH DAY, YEAR]

1. **Quarterly Operating Results:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Month | High-Hazard Zone Fuel Volume (1)  (BDT) | High-Hazard Zone Fuel  Input (2)  (MMBtu) | Supplemental Fuel Source  Volume (1)  (BDT) | Supplemental Fuel Source Input (2)  (MMBtu) |
| 1 |  |  |  |  |
| 2 |  |  |  |  |
| 3 |  |  |  |  |

(1) Fuel Volume measured in bone dry tons (BDT).

(2) Estimated energy content (in MMBtu) of fuel input used

1. **Source(s) of Fuel:** Provide a demonstration of and all supporting documentation for the fuel sourced and used by the Project to generate Bundled Green Energy during the reporting period.
2. **Transportation Used to Deliver Fuel:** Provide documentation from shipper/transporter regarding transportation of all such fuel inputs used at the Project to generate Delivered Energy during the reporting period.
3. **Other Information Relevant to Quarterly Fuel Use:** Provide any additional information necessary regarding Seller’s operation and fuel use during the reporting period as related to this Quarterly Fuel Attestation.

|  |
| --- |
|  |
| Signed |
|  |
| Printed Name |
|  |
| Title |
|  |
| Dated |

**Exhibit J-2**

**FORM OF aNNUAL fUEL sUPPLY pLAN**

1. **Name and Address of Facility (“Project”):**

Name:

Street:

City: State: Zip Code:

Generation Nameplate (kW):

1. **Reporting Period:**

Year:

1. **Source(s) of Fuel to be Used:** Provide Seller’s plan to procure the High-Hazard Zone Fuel for the next Contract Year, including any available documentation, reasonably sufficient to demonstrate Seller’s compliance with the Minimum High Hazard Zone Fuel Requirement set forth in the Emergency Proclamation.
   1. **High Hazard Zone Fuel:**
   2. **All Other Sources of Biofuel:**
2. **Transportation to be Used to Delivery Fuel:** Provide Seller’s plan and any documentation from contractor(s) regarding transportation of all fuel, including High Hazard Zone Fuel, to be used to generate electricity during the next Contract Year.
3. **Other Information Relevant to Annual Fuel Supply Plan:** Provide any additional information regarding Seller’s operation or its plan to source fuel during the next Contract Year in compliance with the Minimum High Hazard Zone Fuel Requirement set forth in the Emergency Proclamation.

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|  |
| Signed |
|  |
| Printed Name |
|  |
| Title |
|  |
| Dated |

1. https://www.gov.ca.gov/docs/10.30.15\_Tree\_Mortality\_State\_of\_Emergency.pdf [↑](#footnote-ref-1)